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SUPREME COURT, U.S.

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1950

## No. 301

PAUL MOSER, PETITIONER,

*vs.*

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 11, 1950.

CERTIORARI GRANTED JANUARY 2, 1951.

# SUPREME COURT OF THE UNITED STATES

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# IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petition #458512

In the Matter of the Petition of PAUL MOSER to Be Admitted to Become a Citizen of the United States of America, UNITED STATES OF AMERICA, Appellant; PAUL MOSER, Appellee

STATEMENT UNDER RULE XV

The United States of America appeals from an order of the United States District Court, Eastern District of New York (Honorable Harold M. Kennedy, District Judge), dated July 21, 1949, admitting Paul Moser, the appellee, to United States citizenship. The petition for naturalization was filed on March 31, 1948, in the office of the Clerk of the United States District Court, Eastern District of New York. The final hearing was had on July 21, 1949, on which date the order appealed from was dated and filed. The notice of appeal herein was filed on September 13, 1949. There has been no arrest, either of person or property, no bail, and no attachment. No question has been referred to a Commissioner, or to a Master, or to a Referee. The appellee herein, the petitioner below, appeared in the District Court by his attorney, Morris E. Vogel, Esquire. There has not been any change in the parties to this action.

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[fol. 2] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

Petition #458512

In the Matter of the Petition of PAUL MOSER to Be Admitted to Become a Citizen of the United States of America, UNITED STATES OF AMERICA, Appellant; PAUL MOSER, Appellee

NOTICE OF APPEAL

Notice is hereby given that United States of America hereby appeals to the Court of Appeals for the Second Circuit from the order of the United States District Court for the Eastern District of New York granting the petition

of the above named Paul Moser to be admitted to become a citizen of the United States of America in so far as said order admitted the said Paul Moser as a citizen of the United States of America, which order was dated, entered and filed herein on July 21, 1949.

Dated: Brooklyn, New York, September 13, 1949.

[fol. 3] J. Vincent Keogh, United States Attorney, Eastern District of New York, Attorney for United States of America, Appellant, 521 Federal Building, Brooklyn, New York.

To Hon. Percy G. B. Gilkes, Clerk, U. S. District Court; Morris E. Vogel, Esquire, 551 Fifth Avenue, New York 17, New York, Attorney for Paul Moser.

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[fol. 4] IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

ORDER APPEALED FROM

Date: June 8, 1949

UNITED STATES OF AMERICA,
United States District Court, ss:

Upon consideration of the petitions for naturalization listed on List No. — sheet(s) 1 to 2 dated June 8, 1949, presented in open Court this 21st day of July, A. D., 1949, it is hereby ordered that each of the said petitions be, and hereby is, denied, except those petitions listed below.

Recommendation of Designated Officer Is Disapproved as to the Petitions Listed Below, and each of said petitioners so listed having appeared in person, it is hereby ordered that each of them be, and hereby is, admitted to become a citizen of the United States of America. Prayers for change of name listed below granted, except in petition(s) No. —.

| Petition No. | Name of Petitioner |
|---|---|
| 1 45812 | Paul Moser |

It is further ordered that petitions listed below be continued for the reasons stated.

By the Court.

Harold M. Kennedy, U. S. D. C. Judge.

3

# Petition for Naturalization No. 330801

DUPLICATE (To accompany monthly report on Form M-ii)

## UNITED STATES OF AMERICA

No. 330801

## PETITION FOR NATURALIZATION

[Oa] Alienized Person, under Sec. 310(a) or (b), 311 or 312, of the Nationality Act of 1940 (54 Stat. 1144-1145).

458512

To the Honorable the D. C. District Court Eastern District at

This petition for naturalization, hereby made and filed pursuant to Section 310(a) or (b), of the Nationality Act of 1940, respectfully shows:

(1) My full, true, and correct name is [redacted]

(2) My present place of residence is [redacted] (Street) (3) My occupation is Civil Engineer

(4) I am 29 years old. (5) I was born on September 16, 1911 (Year) in Biel, Switzerland (or alien) (Country)

(6) My personal description is as follows: Sex male; color wh; complexion fair; color of eyes brn, color of hair brn, height 6 feet 0 inches, weight 168 pounds; visible distinctive marks scar over right eye; race wh; present nationality Swiss

(7) I am married; the name of my wife or husband is Mary; we were married on October 19, 1940 (Year)

at New York, N.Y.; he or she was born at Lidia, South Am. N.Y. (Country) on October 16, 1914 (Year)

[redacted] (City or town) (State) 27 (Month) (Day) (Year) naturalized citizen in the United States and now resides at

[redacted] (Number) (Street) (City or town) (State)

[redacted]; or became a citizen by birth.

(7a) (If petition is filed under Section 311, Nationality Act of 1940) I have resided in the United States in marital union with my United States citizen spouse for at least 1 year immediately preceding the date of filing this petition for naturalization.

(7b) (If petition is filed under Section 312, Nationality Act of 1940) My husband or wife is a citizen of the United States, is in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General of the United States, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof; and such husband or wife is regularly stationed abroad in such employment. I intend in good faith to take up residence within the United States immediately upon the termination of such employment abroad.

(8) I have 1 children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows:

Theodore, m, July 5, 1941; born and resides at New York, N.Y.

(9) My last place of foreign residence was Biel/Bienne, Switzerland (Country) (10) I emigrated to the United States from Montreal, Canada (Country) (11) My lawful entry for permanent residence in the United States was at Rouses Point, N.Y. under the name Paul Moser on December 29, 1937 (Month) (Day) (Year) the D.A.H. SS (Name of vessel) as shown by the certificate of arrival attached to this petition.

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

| DEPARTED FROM THE UNITED STATES | | | RETURNED TO THE UNITED STATES | | |
|---|---|---|---|---|---|
| PORT | DATE (Month, day, year) | VESSEL OR OTHER MEANS OF CONVEYANCE | PORT | DATE (Month, day, year) | VESSEL OR OTHER MEANS OF CONVEYANCE |
| | | | | | |
| | | | | | |
| | | | | | |

UNITED STATES DISTRICT COURT
Eastern District of New York
Exhibit 13 in evidence
Date June 9, 1949
[signature]

(13) (Declaration of intention) (14) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States. (15) I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. (16) I am able to speak the English language (unless physically unable to do so). (17) I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. (18) I have resided continuously in the United States of America for the term of 3 years at least immediately preceding the date of this petition, to wit: since December 29, 1937 (Month) (Day) (Year) (19) I have not heretofore made petition for naturalization

number [redacted] on (Month) (Day) (Year) at (City or town) (County) (State) in the (Name of court)

Court, and such petition was dismissed or denied by that Court for the following reasons and causes, to wit:

and the cause of such dismissal or denial has since been cured or removed.

(20) Attached hereto and made a part of this, my petition for naturalization, are a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United States for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavits of at least two verifying witnesses required by law.

(21) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to

(22) I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition is signed by me with my full, true name: SO HELP ME GOD.

[redacted] (Full true and correct signature of petitioner, without abbreviation)

Form M-305
U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
(Edition of 1-12-44)

o10—19460

5

330801

4

## AFFIDAVIT OF WITNESSES

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Walter J. Grossenbacher my occupation is Head of cable dept.

I reside at 1814 Metropolitan Ave., Parkchester, N.Y.
(Number and street) (City or town) (State)

My name is Joseph Marzioti my occupation is office clerk

I reside at 120-45 197 St. St. Albans, L.I. N.Y.
(Number and street) (City or town) (State)

I am a citizen of the United States of America. I have personally known and have been acquainted in the United States with PAUL MOSER

, the petitioner named in the petition for naturalization of which this affidavit is a part, since January 1, 1938
(Month) (Day) (Year)

to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned, and I have personal knowledge that the petitioner is now and during all such period has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief: SO HELP ME GOD.

(Signature of witness) (Signature of witness)

Subscribed and sworn to before me by the above-named petitioner and witnesses, in the respective forms of oath shown in said petition and affidavit, in the office of the Clerk of said Court at Brklyn, N.Y. this 27th day of March, Anno Domini 1942 I hereby certify that Certificate of Arrival No. 3-566741 from the Immigration and Naturalization Service, showing the lawful entry for permanent residence of the petitioner above named, has been by me filed with, attached to, and made a part of this petition on this date.

Clerk.

[SEAL]

By , Deputy Clerk.

### ADJOURNMENTS

| FROM— | TO— | REASONS | EXAMINER |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

### FINAL HEARING

ADMITTED OR DENIED

Date , 19

Grounds

Examiner

C/A OK
Age 30

S. 310 (b)- Selective Service Act-
Fm BC 244 att.

1232

### RESULT OF EXAMINATION

Deposit as required to cover residence, etc. { in from to Received
in None from to Received
in from to Received

### STATEMENT OF APPLICANT

Absence from United States not alleged in petition Yes- Fm 1005 att.

Marital history not shown in petition M r/w 1st mar. ca. 1 ch. here

Anarchistic or subversive None Developed

Education Speaks English SR RR

Knowledge of Constitution and Government F

Attendance upon classes college grad.

Arrests, offenses, convictions, or other dispositions NCR in & out US except about 4 traffic viol. Fm 814 att.

Attachment to Constitution Yes

No org. except Boerer Club ( Swiss Soc. Club)

### STATEMENTS OF WITNESSES

| | Witness Joseph Marzioti | Witness Walter J. Grossenbacher |
|---|---|---|
| Native | X | nat'd 2270-9-6-34 |
| Naturalized | | |
| Other | | |
| Known petitioner since | ~~xxxxxxxxxxxx~~ 1-1-38 | 1-1-38 |
| Petitioner absent from United States | Yes as alleged | Yes as alleged |
| Petitioner arrested | No nor wit. | No nor wit. |
| Witness absent from United States | No | No |

Recommendation of preliminary examiner C- Inv. abs., CR & pred ABR.

Recommendation of designated examiner

Alien Registration Receipt Card No. exhibited to me this date CA 132 att. Mar. 27, 1942

Petitioner and above witnesses sworn by me on

To return to office unused reentry permit obtained in 193 . , Preliminary Examiner.

Exh W's B/C & M/C. , Designated Examiner.

330801

2

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2-56

45851

June 15th, 1941.

U. S. Dept. of Justice
Immigration & Naturalization Service
Federal Building
Christopher Street
New York, New York

SPECIAL
1/17/41
cp

Gentlemen:-

Please note change of my address:-

| OLD ADDRESS | NEW ADDRESS |
|---|---|
| 451 E. 119th St. | 32-55 81st St. |
| New York, N. Y. | Jackson Heights, L. I. |

Very truly yours,

P. Moser

PAUL MOSER

PM:jm

RECEIVED
JAN 16 1941
IMMIGRATION & NATURALIZATION SERVICE
NEW YORK
N. Y.

3

6

COURT NO.
PET. NO. [illegible]

| COURT ADJOURNMENTS | | | | FINAL HEARING |
|---|---|---|---|---|
| FROM | TO | REASONS | EXAMINER | DENIED |
| C | 6/5/44 | Absent | JCB | Date 7-3-1945 |
| C | 1-22-45 | Absent | JCB | Grounds Lack of Prosecution |
| C | 3-19-45 | absent | JCB | |
| C | 4-30-45 | Absent | JCB | (Orig. Pet.) |
| | | | | Examiner [illegible] |

DESIGNATED EXAMINER'S HEARINGS

| FROM | TO | REASONS | EXAMINER |
|---|---|---|---|
| C | 3/27/42 | Dsw. abs; Dsw CRj ARR | H.J.G. |
| C | 7/7/42 | Dsw Abs. | H.J.G. |
| " | 1-7/43 | Facts to CT re. Standing by Petnr in his absence | [illegible] |
| " | 4/4/43 | [illegible] | [illegible] |
| C | 11/6/43 | F.B.O. Dsw. Ri [illegible] pre-Progi activities | H.J.G. |
| D | 5-3-44 | | H.J.G. |

DEPOSITIONS REQUIRED: No

ALL DEPOSITIONS MAILED TO COURT CLERK
FILED WITH

Date _____ ACTION TAKEN BY _____

DESIGNATED EXAMINER'S REPORT

Absences from U.S. Ro Dsw P/E

Arrests etc. Ro Dsw P/E

Witnesses verify above re absences, arrests etc. yes

Subversive activities, etc. no

Date 3/27/42 Initials H.J.G.

4-30-45

* D - Petr has failed to prosecute his petn for natz JCB.

READY FOR H.C.

H.J.G.

4

8

7

# Application for Certificate of Arrival and Preliminary Form for Petition for Naturalization No. 458512

DENIED

33801-D

Form No. 609
U. S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
(Rev. 1-46)

Form Approved
Budget Bureau No. 43-R078.43

458512

MAR 31 1948

Sec. 310(b)

## Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization

2271-330801

*For use in searching records of arrival:*

RECORDS EXAMINED

Card index

Index books

Manifests

RECORD FOUND

Place

Name

Date

Manner

Marital status

Use Form N-215 or N-230 in issuing certificate of arrival on this application.

TO THE APPLICANT: DO NOT WRITE ABOVE THIS LINE. READ CAREFULLY AND FOLLOW THE INSTRUCTIONS ON LAST PAGE HEREOF.

*Take or mail this application to:*
IMMIGRATION AND NATURALIZATION SERVICE,
70 COLUMBUS AVENUE,
NEW YORK 23, N. Y.

Date November 10, 1947

I, Paul Moser (Name of applicant), residing at 71 Transverse Road (Number and street), Garden City (Name of applicant) Nassau (County) N.Y. (State), desire to file a petition for naturalization in the District (Name of court) Court at New York (City or town) N.Y. (State). I submit herewith a statement of facts to be used in filing such petition, three photographs of myself, each of which I have signed, and my declaration of intention (first paper), if one is required.

I hereby apply for a Certificate of Arrival (if required) showing my lawful entry into the United States for permanent residence. NOTE.—IF THIS APPLICATION IS ACCOMPANIED BY A DECLARATION OF INTENTION (FIRST PAPER) MADE SINCE JULY 1, 1929, ANSWER ONLY QUESTION NUMBER 5 ON THIS PAGE.

(1) I arrived in the United States through the port of ~~New York~~ Rouses Point N.Y. (City or town) under the name of Paul Moser on the vessel SS EXCAMBION 12/29/37 D+HRR (If otherwise than by vessel, show manner of arrival) on ~~10~~ 11 (Month) (Day) 1940 (Year)
(If arrival was through {Canada / Mexico} I arrived at the port of ..... ({Canada / Mexico}
on ..... (Month) (Day) (Year) on the vessel .....)

(2) (If arrival by ship) Name of steamship line was American Export Lines, Inc.
first, second, or third cabin Second (State which) I arrived as a passenger, stowaway, seaman, member of crew, or otherwise passenger

(3) The ticket on which I came to this country was bought at Biel (State which, giving nearest city) Switzerland (Country)

(4) The steamship ticket on which I traveled was in the name of Paul Moser

(5) I have been absent from the United States as follows: 11/26/45 to 12/29/45 N.Y.P.AA. Flight #NC88884
4/21/46 to 1/30/47 N.Y.-AirFrance Flight #61/02 Merely to be
6/20/48 to 8/31/48 Ogdensburg, N.Y. Car. Surg. 5/a-10/9/40.

I have NOT been absent at any other time.

(6) I was born in Biel (City or town) Switzerland (Country) on 9 (Month) 15 (Day) 1911 (Year)

(7) My father's full name is/~~was~~ Theodore Moser

(8) My mother's maiden name was Adeline Uhler

(9) (If a married woman) My maiden name was .....

(10) My last foreign residence was Biel Switzerland

(11) The place where I took the ship or train which landed me in the United States was Lisbon Portugal (Country)

(12) I traveled on (an immigration visa, a passport, or permit to reenter) Immigration visa

(13) I was ..... examined by United States immigration officers at Port of New York, N. Y. (City or town) (State or country)

(14) (If not examined, state why, and give the circumstances of your entry) .....

(15) The person in the United States to whom I was coming was Miss Mary Daniel

(16) The place in the United States to which I was going was New York, N. Y.

(17) The names of some of the passengers or other persons I traveled with, including members of my own family and their relationship to me, if any, are none

48—11811-9

[OVER]

5

9

Paul Paul Ney. 12/29/37.

(18) In what places in the United States have you resided during the past five years?

New York (City or town) N.Y. (State) From October (Month) 1940 (Year) to today (Month) (Year)

(City or town) (State) From (Month) (Year) to (Month) (Year)

(City or town) (State) From (Month) (Year) to (Month) (Year)

(19) What were the names, occupations, and addresses of your employers during the last 5 years?

Vulcan Steel Product Co. (Employer's name) 232 Varet St. (Number and street) Bklyn, N.Y. (City) 1940-41 Engr (Occupation)

Queens Model Engineering Co. 102-02 Corona Ave. Corona, N.Y. 1942-45 Mgr.

Maveg Inc. 24-16 Bridge Plaza So. L.I.C. N.Y. 1946-47 Mgr.

(20) Have you read the following oath of allegiance? yes Jan 3/31/48

I HEREBY declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God.

Are you willing to take this oath in becoming a citizen? yes

Of what country are you now a citizen or subject? Switzerland

(21) If necessary, are you willing to take up arms in defense of the United States? yes Jan 3/31/1948

Have you ever, during the time this country was at war, deserted the military or naval forces of the United States, or departed from the jurisdiction of the enrollment district or the United States to avoid draft into the military or naval forces of the United States? no

(22) How many times have you ever been married? once each.

(23) Have you ever been an inmate of an insane asylum? no

(24) Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? yes

If so, give date, place and cause of arrest and disposition of each case

6/13/47 Speed, Fined, Traffic Court of Queens $5 no other CR.

(25) Have you ever been deported from the United States, or are deportation proceedings now pending against you? no

If so, state all facts

(26) During the last ten (10) years I have been a member of the following organizations and no other

Chamber of Commerce of Queens

Rac. Club. A.A.A.

(27) Was your father or mother ever a citizen of the United States? no If so, give full particulars

(28) Did you register under the Alien Registration Act of 1940? yes

If so, state the number of your Alien Registration Receipt Card 4906863 (Registration number)

(29) If male, did you register under the Selective Service (Draft) Law of 1940 as amended? yes

If so state your Draft Board No. 14 Located at New York (City) N. Y. (County) N.Y. (State)

Classified in class 4C 4A Reason for such classification

(30) Did you yourself fill out this form? yes If not, give the name and address of the person who did

(31) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States. I am not, and have not been for the period of at least 10 years immediately preceding the date of this statement, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. I am able to speak the English language, unless physically unable to do so. I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

I CERTIFY that all the statements made by me in this application and form are true to the best of my knowledge and belief.

IMPORTANT

Forward your Alien Registration Receipt card with this application.

Paul Russes. (Signature of applicant)

71 Transverse Road, (Address at which applicant receives mail)

Garden City, N. Y

16- 81411-4

6

310A

## Statement of Facts To Be Used in Making and Filing My Petition for Naturalization

3

(1) My full, true, and correct name is Paul Moser (Full, true name, without abbreviations, and any other name which has been used must appear here) 458512

(2) My present place of residence is 71 Transverse Road, Garden City (City or town) Nassau, (County) N. Y. (State)

(3) My occupation is Civil Engineer (4) I am 36 years old

(5) I was born on 9 (Month) 15 (Day) 1911 in Biel (City or town) Bern (County, district, province, or state) Switzerland (Country)

36 (6) My personal description is as follows: Sex Male color white; complexion fair; color of eyes brown; color of hair brown; height 6 feet 0 inches; weight 175 pounds; visible distinctive marks none scotoma rt eye.

race white present nationality Swiss

(7) I am ..... married; the name of my wife ~~is~~ was Mary; we were married on 10 (Month) 19 (Day) 1940 (Year) at New York City (City or town) N. Y. (State or country); ~~she~~ she was born at Little Neck, Nassau, N.Y. (City or town) (County, district, province, or state) on 10 (Month) 16 (Day) 1914 (Year) entered the United States at ..... (City or town) on ..... (Month) (Day) (Year) for permanent residence in the United States and now resides at Lubec (City or town) Me (State or country) and was naturalized on ..... (Month) (Day) (Year) at ..... (City or town) (State) certificate No. ..... ; or became a citizen by birth

(8) I have (3) children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living are as follows:

Theodore Male 7/5/41 Born in New York City
Polet " 6/5/45 " " " " "
Danielle Female 5/19/47 " " " " "
All residing in Garden City, N.Y.

(9) My last place of foreign residence was Biel, Switzerland (City or town) (District, province, or state) Switzerland (Country) (10) I emigrated to the United States from Montreal Biel (City or town) Canada Ponce Point (Country)

(11) My lawful entry for permanent residence in the United States was at ~~New York~~ Ponce Point N.Y. under the name of Paul Moser on the "RS EXCAMBION" (Name of vessel or other means of conveyance) D+H RR on ~~11~~ Dec 29 (Month) 11 (Day) 1940 (Year) 1937

(12, Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

| DEPARTED FROM THE UNITED STATES | | | RETURNED TO THE UNITED STATES | | |
|---|---|---|---|---|---|
| Port | Date (Month, day, year) | Vessel or Other Means of Conveyance | Port | Date (Month, day, year) | Vessel or Other Means of Conveyance |
| New York | 4/21/46 | TWA to Geneva | New York | 1/10/47 | Flight #61/02 Air France |
| | | | | | |
| | | | | | |

3/31/48

(13) I declared my intention to become a citizen of the United States on Sept 30 (Month) (Day) 1940 (Year) in the ..... (Name of Court) Court of ..... at ..... (City or Town)

(14) I have resided continuously in the United States of America since ~~10~~ 12 (Month) 29 (Day) ~~1940~~ 1941 (Year) and continuously in the State of New York where I now live since ~~10~~ 12 (Month) 29 (Day) ~~1940~~ 1941 (Year)

(15) I have ..... heretofore made petition for naturalization No. 330801 on 3 (Month) 27 (Day) 1942 (Year) at Brooklyn, Kings N.Y. (City) (County) (State) in the U.S.District Court, and such petition was dismissed or denied by the Court for the following reasons and causes, to wit for lack of prosecution, and the cause of such dismissal or denial has since been cured or removed.

(16) I wish the naturalization court to change my name to none (Given name) (Middle name)

(17) (1st witness) Abraham Pinson (Name) Partner and manager (Occupation)
residing at 42-15 81st Street (Number and street) Elmhurst, L. I. (City or town) N.Y. (State)
I first met this witness in the United States on ..... (Month) (Day) 1938 (Year)

(18) (2d witness) Alfred Lynford (Name) lawyer attorney (Occupation)
residing at 98-120 Queens Blvd, (Number and street) Forest Hills, L.I. N.Y. (City or town) (State)
I first met this witness in the United States on ..... (Month) (Day) 1941 (Year)

I CERTIFY that the above statement of facts has been read by or to me and that the statement is true to the best of my knowledge and belief.

Paul Moser (Signature of applicant)

71 Transverse Road, Garden City, N.Y. (Address at which applicant receives mail)

**DO NOT FILL IN BLANKS BELOW**

Affidavit of witnesses to show residence of petitioner as follows:
United States 31+9-41
State .....
Examiner John Donnelly

10—11831-1

**DO NOT FILL IN BLANKS BELOW**

Corrections numbered ~~1~~ to ~~1~~ 1 in this Preliminary Form for Petition for Naturalization, N-400, were made by me or at my request.
Applicant Paul Moser
Date 3/31/48

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## INSTRUCTIONS TO THE APPLICANT

**Pages 1, 2, and 3 of this form must be completely filled out (preferably on the typewriter)**

**Immigrant Identification Cards and Alien Registration Receipt Cards.**—Every alien who entered the United States for permanent residence on the basis of an immigration visa on or after July 1, 1928, and prior to August 27, 1940, should be in possession of an immigrant identification card. Every alien in the United States should be in possession of an alien registration receipt card. You need not forward either card with this application. However, you will be required to present these cards when you appear to file your petition for naturalization and to surrender them at the time you are admitted to citizenship. You should therefore carefully save your immigrant identification card and your alien registration receipt card.

**Photographs.**—You must send with this application three photographs of yourself taken within 30 days of the date of this application. These photographs must be 2 by 2 inches in size, and distance from top of head to point of chin should be approximately 1¼ inches, must not be pasted on a card or mounted in any other way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. Each of these photographs must be signed by you on the margin and not on the face or clothing.

**Date of your arrival.**—If you do not know the exact date of your arrival in the United States, or the name of the vessel or port, and you cannot obtain this information by consulting your family or friends who came over with you, give the facts of your arrival as you remember them in the appropriate blank spaces on the first page of this form. Your immigrant identification card or your passport, ship's card, or baggage labels, if you have them, may help you to answer these questions.

If the date of your arrival in the United States was on or before June 29, 1906, you should submit with this application documentary evidence of your residence in the United States prior to that date. Such documents may be family bible entries, deeds of record, wills or other authentic legal documents, life insurance policies, bankbooks and records, employment records or other documents showing that you entered the United States on or before June 29, 1906. Do not submit such documents if your arrival in the United States was after June 29, 1906, or if your declaration of intention (first paper) accompanies this application.

**Nationality and Race.**—Nationality in statement No. 6, page 3, refers to the country of which you are a citizen or subject. As to "race" in the same statement, Section 303 of the Nationality Act of 1940 provides that only white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere are eligible for naturalization. There are certain exceptions, in the cases of native-born Filipinos who have served honorably in the United States Army, Navy, Marine Corps, or Coast Guard for a period of at least 3 years, and in the cases of women who have lost United States citizenship through marriage.

As stated above, the following races are eligible for naturalization:

| | |
|---|---|
| White. | Indian. |
| African or African descent. | Eskimo. |
| Filipino. | Aleutian. |

State to which of these classifications you belong.

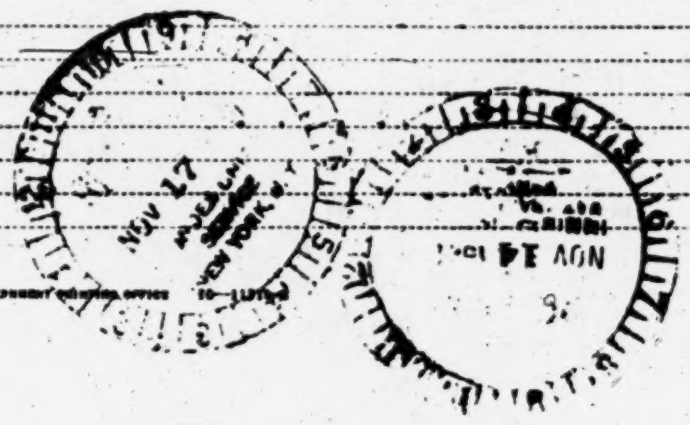
***WITNESSES.**—The names, occupations, and addresses of two citizens you expect to bring with you as witnesses when you appear for examination to file your petition should be stated in items (17) and (18) on page 3. (These witnesses must have personal knowledge of your residence in the State where you now reside and have resided for the past 6 months, and of your character and other qualifications. A foreign-born witness must bring proof of his citizenship.)*

## PENALTY FOR FALSELY SWEARING IN NATURALIZATION CASES

It is a felony, punishable by a fine of not more than $5,000 or imprisonment for not more than 5 years, or both, for an alien or other person, whether an applicant for naturalization or citizenship, or otherwise, knowingly to make a false statement under oath, either orally or in writing, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization or citizenship. (Nationality Act of 1940, Sec. 346 (a) (d).)

## RESULT OF EXAMINATION

**TO THE APPLICANT—Do not write on these lines**




Examiner ..

✓ Petition for Naturalization No. 458512

11

ORIGINAL
(To be retained by Clerk of Court)

# UNITED STATES OF AMERICA

458512
No.

## PETITION FOR NATURALIZATION

[Of a Married Person, under Sec. 310(a) or (b), 311 or 312, of the Nationality Act of 1940 (54 Stat. 1144-1145)]

To the Honorable the U.S. District Court of Eastern District at Brooklyn, N.Y.
This petition for naturalization, hereby made and filed pursuant to Section 310(a) or (b), of the Nationality Act of 1940, respectfully shows:

(1) My full, true and correct name is PAUL MOSER
(Full, true name. Without abbreviation, and any other name which has been used, must appear here)

(2) My present place of residence is 71 Transverse Rd. Garden City, Nassau NY. (3) My occupation is Civil Engineer
(Number and street) (City or town) (County) (State)

(4) I am 36 years old. (5) I was born on Sept. 15, 1911 in Biel, Bern, Switzerland
(Month) (Day) (Year) (City or town) (County, district, province, or state) (Country)

(6) My personal description is as follows: Sex Male, color white, complexion fair, color of eyes brn, color of hair brn., height 6 feet 0 inches, weight 175 pounds; visible distinctive marks scar over rt. eye; race white; present nationality Swiss

(7) I am ..... married; the name of my wife ~~[illegible]~~ is Mary; we were married on Oct. 19, 1940
(Month) (Day) (Year)

at New York, N.Y.xxx (City or town) (State or country) ~~[illegible]~~ she was born at Little Neck, Nassau.NY (City or town) (County, district, province, or state) (Country) on Oct.16,1914 (Month) (Day) (Year)

entered the United States at XXXXXXXXXXXX (City or town) (State) on — — (Month) (Day) (Year) for permanent residence in the United States, and now resides XX with me at 71 Transverse Rd. Garden City, L.I.N.Y. (Number and street) (City or town) (State or country) (Month) (Day) (Year) at — — (City or town) (State)

certificate No. — — —, or became a citizen by Birth

(7a) (If petition is filed under Section 311, Nationality Act of 1940) I have resided in the United States in marital union with my United States citizen spouse for at least 1 year immediately preceding the date of filing this petition for naturalization.

(7b) (If petition is filed under Section 312, Nationality Act of 1940) My husband or wife is a citizen of the United States, is in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General of the United States, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof; and such husband or wife is regularly stationed abroad in such employment. I intend in good faith to take up residence within the United States immediately upon the termination of such employment abroad.

(8) I have 3 children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows:
Theodore (M) July 5, 1941; Polet (M) June 5, 1945; Danielle (f) May 19, 1947 all three born and reside at New York

(9) My last place of foreign residence was Biel, Switzerland (City or town) (County, district, province, or state) (Country) (10) I emigrated to the United States from Montreal (City or town) Canada (Country) (11) My lawful entry for permanent residence in the United States was at Rouses Point, N.Y (City or town) (State) under the name of Paul Moser on Dec. 29, 1937 (Month) (Day) (Year) on the D.&H.R.R. (Name of vessel or other means of conveyance) as shown by the certificate of my arrival attached to this petition.

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

| DEPARTED FROM THE UNITED STATES | | | RETURNED TO THE UNITED STATES | | |
|---|---|---|---|---|---|
| PORT | DATE (Month, day, year) | VESSEL OR OTHER MEANS OF CONVEYANCE | PORT | DATE (Month, day, year) | VESSEL OR OTHER MEANS OF CONVEYANCE |
| | | | | | |
| | | | | | |
| | | | | | |

(13) (Declaration of intention not required) (14) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States. (15) I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. (16) I am able to speak the English language (unless physically unable to do so). (17) I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. (18) I have resided continuously in the United States of America for the term of 3 years at least immediately preceding the date of this petition, to wit: since December 29, 1937 (Month) (Day) (Year) (19) I have xxx heretofore made petition for naturalization number 330801 on March 27, 1942 (Month) (Day) (Year) at Brooklyn, Kings New York (City or town) (County) (State) in the U.S.District (Name of court)

Court, and such petition was dismissed or denied by that Court for the following reasons and causes, to wit: lack of prosecution and the cause of such dismissal or denial has since been cured or removed.

(20) Attached hereto and made a part of this, my petition for naturalization, are a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United States for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavits of at least two verifying witnesses required by law.

(21) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to .....

(22) I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition is signed by me with my full, true name. SO HELP ME GOD.

Paul Moser
(Full, true, and correct signature of petitioner. Without abbreviation)

Form N-405
U. S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
(Edition of 1-13-41)

e16—19480

9

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## AFFIDAVIT OF WITNESSES

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Abraham Pinson my occupation is Partner & Manager

I reside at 42-15 81st St, Elmhurst, LI, NY (Number and street) (City or town) (State)

My name is Alfred Lynford my occupation is Attorney

I reside at 98-120 Queens Blvd. Forest Hills, LI, N.Y. (Number and street) (City or town) (State)

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with Paul Moser, the petitioner named in the petition for naturalization of which this affidavit is a part, since March 1, 1941 (Month) (Day) (Year) to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned, and I have personal knowledge that the petitioner is now and during all such period has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief: SO HELP ME GOD.

Abraham Pinson (Signature of witness) Alfred Lynford (Signature of witness)

Subscribed and sworn to before me by the above-named petitioner and witnesses, in the respective forms of oath shown in said petition and affidavit, in the office of the Clerk of said Court at Brooklyn N.Y. this 31st day of March, Anno Domini 19 49 I hereby certify that Certificate of Arrival No. 2-566741 from the Immigration and Naturalization Service, showing the lawful entry for permanent residence of the petitioner above named, has been by me filed with, attached to, and made a part of this petition on this date.

Clerk.

By Charles N. Miller [SEAL]
Deputy Clerk.

## OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: SO HELP ME GOD. In acknowledgment whereof I have hereunto affixed my signature.

Paul Moser
(Signature of petitioner)

Sworn to in open court, this 21 day of July, 1949, A. D. 19....

Clerk.

By Joseph Negri
Deputy Clerk.

NOTE.—In renunciation of title or order of nobility, add the following to the oath of allegiance before it is signed: "I further renounce the title of (give title or titles) which I have heretofore held," or "I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged."

Petition granted: Line No. ..... of List No. ..... and Certificate No. 6849995 issued.

Petition denied: List No. .....

Petition continued from 3/10/49 to 90 days from date List 268a
June 9, 1949 Decision reserved List 281a

10

13a

[fol. 14] IN UNITED STATES DISTRICT COURT

[Title omitted]

GOVERNMENT'S FORMAL OBJECTION

The United States of America hereby opposes the granting of citizenship to the petitioner above named on the ground that he is ineligible for naturalization by virtue of Section 3(a) of the Selective Training and Service Act of 1940, as amended, having made application for relief from military service.

That in support of the objection hereby interposed, the following are offered in evidence:

1. Photostatic copy of DSS Form 301 executed by petitioner on February 26, 1944.
2. Photostatic copy of DSS Form 40 executed by petitioner on January 15, 1941.
3. Triplicate copy of Declaration of Intention #411089 dated March 9, 1938.
4. Letter from Selective Service dated April 12, 1948.

[fol. 15] 5. Form A-2214 (Preliminary Form for Petition for Naturalization) received March 27, 1942.

6. Triplicate Petition for Naturalization No. 330801 filed by petitioner in the U. S. District Court at Brooklyn, New York on March 27, 1942.

Wherefore, objection is made to the granting of the petition for naturalization as aforesaid.

Dated: June 9, 1949.

Edward J. Shaughnessy, District Director, Immigration and Naturalization Service.

[fol. 16] EXHIBIT 1

New York City Headquarters, Selective Service System

516 West 34th Street, New York 1, N. Y.

Refer to File 15:HFM

Moser, Paul, Order No. 674, Local Board No. 14,
2271-458512-RD

April 20, 1949.

U. S. Department of Justice, Immigration & Naturalization,
271 Washington Street, Brooklyn, New York.

GENTLEMEN:

Your letter of April 14, 1949 relative to the above-named is acknowledged.

Enclosed herewith are photostatic copies of DSS form 301 and registrant's letter dated January 29, 1944 whereby he sought and was accorded relief from military service in the Armed Forces of the United States.

For the New York City Director, (Signed) Ernestine F. Bullis, Chief, Records Division.

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[fol. 17] Application by Alien for Relief from Military Service

Local Board No. 14 23
New York County 061
FEB 26 1944 014
331 Madison Ave., Rm. 1004
New York, N. Y.
(*Local Board Date Stamp With Code*)

February 26, 1944

STATE OF NEW YORK,
County of Queens, ss:

I, Paul Moser do solemnly swear—or—affirm—that I am a citizen or subject of Switzerland; I am a registrant of Local Board 14, New York, Man., New York; my alien reg-

istration number is 4906863; I have not declared my intention to become a citizen of the United States; my declaration of intention to become a citizen of the United States is No. ——, and was filed in the —— Court at (City): ——, (County): ——, (State): ——, on (Month and day): ——, 19—.

I hereby apply for relief from liability for training and service in the land or naval forces of the United States.

(Signature of registrant): (Signed) P. Moser.

Subscribed and sworn before me this 26th day of February, 1944. (Signed) Henry Goldfine, Comm. of Deeds, City of New York. (Signature of officer)

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[fol. 18] Exhibit 1

Section 3 (a) of the Selective Training and Service Act of 1940, as amended, provides in part "That any Citizen or subject of a neutral country shall be relieved from liability for training and service under this Act if, prior to his induction into the land or naval forces, he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President, but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States."

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Instructions

This form should be executed by the registrant in duplicate. The local board will transmit the original to the Director of Selective Service through the State Director of Selective Service and will retain the duplicate in the registrant's Cover Sheet (Form 53). (See section 622.43 (b) of the Selective Service Regulations.)
DSS Form 301 (Revised 3-16-43)

[fol. 19] EXHIBIT 1-A

(Stamp of Local Board)

Date received ——, 194-.

Application by Alien for Relief from Military Service

STATE OF ——,
County of ——, ss:

I (First name): ——, (Middle name): ——, (Surname): ——, do solemnly swear—affirm—that I reside at (City): ——, (County): ——, (State): ——; that I am registered with Local Board (Number): ——, (City): ——, (County): ——, (State) ——; that my order number is —— and serial number is ——; and that I am a citizen or subject of (County): ——, which is neutral in the present war. My alien registration number is ——.

I do hereby make application to be relieved from liability for training and service in the land or naval forces of the United States, under the Selective Training and Service Act of 1940, as amended, in accordance with the act of Congress, approved December 20, 1941. I understand that the making of this application to be relieved from such liability will debar me from becoming a citizen of the United States. [fol. 20] I have) or (have not): —— filed a declaration of intention to become a citizen of the United States.

(To be Filled in by Declarant Neutral Aliens Only)

My declaration of intention to become a citizen of the United States was filed in the —— court at (City): ——, (County): ——, (State): ——, on ——, 19— (Strike out *a* or *b*, whichever does not apply.) *a* I herewith surrender my original triplicate copy of my declaration of intention to become a citizen of the United States, number ——. *b* the original triplicate copy of my declaration of intention to become a citizen of the United States is not in my possession for the reason that ——, but I undertake to surrender said copy of my declaration of intention to become a citizen of the United States should it at any time come into my possession.

(Signature of registrant): —— ——.

Subscribed and sworn to before me this — day of ——, 194—. (Signature of Officer): —— ——.
(Designation of Officer): —— ——.

[fol. 21] (This oath may be administered by any civil officer authorized to administer oaths generally, any commissioned officer of the land or naval forces assigned for duty with the Selective Service System, any member or clerk of a local board or board of appeal, any Government appeal agent or associate Government appeal agent, any member or associate member of an advisory board for registrants, any postmaster, acting postmaster, or assistant postmaster.)

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Instructions

Any citizen or subject of a neutral country who wishes to be relieved from liability for training and service under the Selective Training and Service Act of 1940 as amended prior to his induction must execute two copies of this application which shall be subscribed and sworn to, and filed with the local board.

The local board will transmit the original of the Application by Alien for Relief From Military Service (Form 301), together with the triplicate copy of the declaration of intention to become a citizen of the United States, if surrendered, to the State Director of Selective Service for transmittal to the Immigration and Naturalization Service of the Department of Justice. The remaining copy of Application by Alien for Relief From Military Service (Form 301) will be filed in the registrant's cover sheet (Form 53).

DSS Form 301.

(Here follows 1 Photolithograph, side folio 22-23)

18A

Exhibit 2 to [illegible] 411083

United States District Court
TRIPLICATE (This copy to be given to declarant)
Southern District of New York
Exhibit — to Deposition
Date June 9, 1947
[illegible]
Deputy Clerk

No. 458512

# UNITED STATES OF AMERICA

## DECLARATION OF INTENTION

(Invalid for all purposes seven years after the date hereof)

In the _____ Court

In re: _____

of _____ at _____

I, PAUL MOSER (Full name in which petition for naturalization will be made, and proper name which has been used, must appear here)

now residing at 306 East 86th St. New York, NY (Number and street) (City or town) (County) (State)

occupation Civil Engineer, aged 28 years, do declare on oath that my personal description is:

Sex Male, color white, complexion light, color of eyes brown

color of hair brown, height 6 feet — inches; weight 180 pounds; visible distinctive marks none

race German; nationality Swiss

I was born in Biel, Switzerland (City or town) (Country) on September 15, 1911 (Month) (Day) (Year)

I am not married. The name of my wife or husband is _____

we were married on _____ (Month) (Day) (Year), at _____ (City or town) (State or country); she or he was

born at _____ (City or town) (State or country), on _____ (Month) (Day) (Year), entered the United States

at _____ (City or town) (State), on _____ (Month) (Day) (Year), for permanent residence therein, and now

resides at _____ (City or town) (State or country) I have no children, and the name, date and place of birth,

and place of residence of each of said children are as follows: _____

I have not heretofore made a declaration of intention: Number _____, on _____ (Date)

at _____ (City or town) (State or court)

my last foreign residence was Biel, Switzerland (City or town) (Country)

I emigrated to the United States of America from (Havre, France) Montreal (City or town) Spain (Country)

my lawful entry for permanent residence in the United States was at Rouses Point, NY (City or town) (State)

under the name of Paul Moser, on December 22, 1937 (Month) (Day) (Year)

on the vessel DAIR (If other than by vessel, state manner of arrival)

I will, before being admitted to citizenship, renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which I may be at the time of admission a citizen or subject; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to reside permanently therein; and I certify that the photograph affixed to the duplicate and triplicate hereof is a likeness of me: So HELP ME GOD.

X Paul Moser.
(Complete signature of declarant, without abbreviation, and write in ink)

Subscribed and sworn to before me in the office of the Clerk of said Court, at New York, NY this 24th day of March anno Domini 19 38 Certification No. 5667A1 from the Commissioner of Immigration and Naturalization showing the lawful entry of the declarant for permanent residence on the date stated above, has been received by me. The photograph affixed to the duplicate and triplicate hereof is a likeness of the declarant.

[SEAL] Clerk of the _____ Court.

By _____, Deputy Clerk

Form 2202—I-A
16—6222
U. S. DEPARTMENT OF LABOR
IMMIGRATION AND NATURALIZATION SERVICE

11

22-23

[fol. 24] EXHIBIT 3

Consulate General of Switzerland

New York

For the States of N. Y., Northern N. J., Conn., R. I., Mass., Me., Vt., N. H, Puerto Rico and the Virgin Islands

Please Refer to No 8.21.37 FL: FT

New York, N. Y.
444 Madison Avenue
February 3, 1944

Mr. Paul Moser, 88-10 Whitney Avenue, Elmhurst, Long Island

DEAR SIR:

I refer to our recent conversation regarding your application for unconditional release from the liability for military service in the United States Armed Forces, and wish to inform you that according to information received from our Legation, they are of the opinion that you should be considered as a non-declarant Swiss alien. Your application has at once been submitted to the Department of State for further action. You should inform this office or the Legation of any communication you might receive from your Local Board.

The Military Department of our Legation states that your military taxes for 1942 and 1942 in the amount of $40.43 (including 3¢ postage) are still outstanding, and [fol. 25] they request that these arrears be liquidated immediately. Since you failed to submit a Military Tax Return for 1943, the Legation was compelled to make an official assessment. Although the tax bill for 1943 has not been received, they expect the bill to amount to $29.50. I would, therefore, appreciate your remitting to me the total amount of $69.93, as soon as possible. Furthermore, your declaration for 1944 should also be submitted.

Yours very truly, The Consul General of Switzerland. By: (signed) Charles F. Rosset Vice Consul.

[fol. 26] EXHIBIT 4

January 24, 1944

Consulate General of Switzerland, 444 Madison Avenue, New York, N. Y.

Re: Paul Moser 88-10 Whitney Avenue, Elmhurst, L. I.
Order No. 674

GENTLEMEN:

The *Local Board No. 14*, 331 Madison Avenue, New York City, has classified me on January 20, in 1-A. I wish to be reclassified and deferred from service in the armed forces of the United States as a neutral alien. My status is an "*Alien without first papers for American citizenship,*" for the following reason:

In 1937 I immigrated to the U.S.A. from Canada and shortly after I took out first papers. On May 11, 1940 I returned to Switzerland to join our Army in the field. Upon leaving this country I did not take out a reentry permit and I lost so all the rights ever to return as a resident of the U.S.A. In September 1940 I was forced to apply on the U.S. Consulate in Zuerich for a new immigration visa, and I arrived in New York, on October 11, 1940 under a new immigration quota.

On March 27, 1942 I filed in Brooklyn Court for final citizenship. After a thorough examination of my papers, the citizenship was denied for the reason that, when I left for Switzerland "without a reentry permit" I lost all rights [fol. 27] to my first papers. Two ways to obtain the citizenship were suggested to me by the chief-examiner:

1. To file again for first papers under my new immigration quota number.
2. As I married an American citizen, to await residence of two years and refile again for final papers.

I did not take any action since then.

Since the right to appeal from classification is limited to 10 days, and expires on January 30, 1944, will you kindly let me know if I have to appeal in writing myself, or if you are taking this matter up yourself.

Very truly yours, —— ——.

[fol. 28] EXHIBIT 5

Paul Moser, 88-10 Whitney Avenue, Elmhurst, L. I., N. Y.

January 25, 1944

The Legation of Switzerland, Washington, D. C.

GENTLEMEN:

In conjunction with my letter to Director, Selective Service System, Washington, D. C. kindly find the answers to your prerequisites as outlined on your directive.

a) I entered the United States with an Immigration quota visa on October 11, 1940.

b) I have matriculated with the Consulate General in New York, N. Y. on .....

c) Since my entry in 1940 I have not obtained nor application filled out for "First papers".

d) I have order No. 674.

e) Local Board No. 14, 331 Madison Avenue, New York, N. Y.

Very truly yours, Paul Moser.

23

Exhibit 6

FORM A-2824
U. S. DEPARTMENT OF LABOR
IMMIGRATION AND NATURALIZATION SERVICE

# ACT OF MAY 24, 1934

## APPLICATION FOR A CERTIFICATE OF ARRIVAL and PRELIMINARY FORM FOR PETITION FOR NATURALIZATION

No. 2-5661741
458512

MAR 27 1942

*For use in searching records of arrival:*

United States District Court
Eastern District of New York
Exhibit 12 in evidence
Date June 9, 1949
Thomas Brackett Reed
Deputy Clerk

RECORD FOUND

Card index .....
Index books .....
Manifests .....

Place .....
Name .....
Date .....
Number .....

(Signature of person making search)

Use Form 160-Im. in issuing certificate of arrival on this application.

TO THE APPLICANT: Do not write above this line. Read carefully and follow the instructions on last page hereof.

*Take or mail this application and your money order to—*

IMMIGRATION AND NATURALIZATION SERVICE
Federal Building, Christopher Streets
641 Washington Street
NEW YORK N. Y.

Date ....., 19

R. O. Index

I, Paul Moser, residing at 454 - 44th St. (Number and street), New York (City or town), N.Y. (State), desire to file petition for naturalization in the District (Name of court) Court at New York (City or town) N.Y. (State), in accordance with the naturalization law. I submit herewith a statement of facts to be used in filing such petition, two photographs of me, each of which I have signed, and my declaration of intention (first paper), if one is required.

*See instructions on page 4 hereof, paragraph entitled "Money Order." If you are not exempted therefrom you must secure a money order in payment for a certificate of arrival and fill in the blank below:*

I hereby apply for a certificate of arrival showing my lawful entry into the United States for permanent residence, and inclose money order No. ..... in the sum of $2.50 made payable to the order of the "Commissioner of Immigration and Naturalization, Washington, D.C.," in payment for the certificate of my arrival.

I arrived in the United States ~~through the port of~~ from Montreal (City or town) Rouses Point (State) N.Y., under the name of Paul Moser, on 12 (Month) 29 (Day) 1937 (Year), on the vessel Railroad D & H RR. (If otherwise than by vessel, state manner of arrival)

*Additional facts to aid in locating a record of my arrival:*

1. I have not used another name in this country than that given above. (If so) It was —
   I used that name because —
2. The full name of the person shown on my steamship ticket was Paul Moser
3. I was born in Bienne (City or town) Switzerland (Country) on 9 (Month) 15 (Day) 1911 (Year)
4. My father's full name is/was Theodor Moser
5. My mother's maiden name was Adeline Uhler
6. (If a married woman) My maiden name was —
7. My last foreign residence was Biel / Bienne (City or town) Switzerland
8. The place where I took the ~~ship or~~ train which landed me in the United States was Montreal (City or town) Canada (Country)
9. The ticket on which I came to this country was bought at Montreal (City) Canada (Country)
10. (If arrival by ship) Name of steamship line was —
    first, second, or third cabin — I arrived as a passenger, stowaway, seaman, member of crew, or otherwise passenger
11. I traveled on (an immigration visa, a passport, or permit to reenter) Immigration visa (State which, giving particulars)
12. My original Immigrant Identification Card No. 946810 (State which) is hereto attached. If not herewith, it is because withheld at the American Consulate in Zurich, Switzerland. Mail
13. I paid $ 8.00 head tax at Montreal (City or town) Canada (State or country) on 12 (Month) 29 (Day) 1937 (Year)
14. I was ..... examined by United States immigration officers at Rouses Point (City or town) N.Y. (State or country)
15. (If not examined, state why, and give the circumstances of your entry) —
16. The person in the United States to whom I was coming was Eleanor Davis
17. The place in the United States to which I was going was New York.
18. ~~The names of some of the passengers or other persons I traveled with and their relationship to me, if any, are~~

First Arrival in U.S.A. July 6, 1937 on Vessel Ile de France

I was previously in the United States from July 6, 37 to Dec 25, 1937

16—11311

12

29

Claims did not file county papers [illegible] applic. No 2,1710 Rec'd Claim had 4 B visa Exchanged? 3-22-42 B

I have set forth below my answer to the following questions asked of me:

19. Have you been absent from the United States since the date of your arrival as stated on page 1 of this form? Yes
If so, state month and year you left 5. 11. 1940; month and year you returned 10. 11. 1940
To what country did you go? Switzerland For what reason? Army service
Is this the only time you have been out of the United States? Yes
If not, give full particulars as to other absences —
1938 - Ca - 1 day -
1939 Ca - 4 days

20. In what places in the United States have you resided?
New York (City or town) N.Y. (State) From July (Month) 1937 (Year) to date. (Month) (Year)
(City or town) (State) From (Month) (Year) to (Month) (Year)
(City or town) (State) From (Month) (Year) to (Month) (Year)

21. What were the names and addresses of your employers during the five years immediately prior to the date of this statement?
Th. Moser (Employer's name) 1935 - 1937 (Date) Switzerland (Number and street) (City) (State)
Madigan Hyland (Employer's name) 1937-1940 (Date) 28-04 41st Ave. (Number and street) L.I. City (City) N.Y. (State)
Vulcan Steel Prod Co Nov 1940 - Date - 233 Varick St

22. Do you understand the principles of government of the United States? Yes
23. Do you fully believe in the form of government of the United States? Yes
24. Are you ready to answer questions as to the principles and form of government of the United States? Yes
What have you done to prepare yourself for an examination on the government of the United States?
I read books of U.S. history.

25. Have you read the following oath of allegiance? Yes

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I was before a citizen or subject; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God.

Are you willing to take this oath in becoming a citizen? Yes
Of what country are you now a citizen or subject? Switzerland.
26. If necessary, are you willing to take up arms in defense of this country? Yes
Did you claim exemption from the draft during the World War because you were an alien? No) - not here.
Did you surrender your declaration (first paper) at that time? — No
27. If not now married, have you ever been married? — Are you divorced? No
Are you a believer in the practice of polygamy? No
28. Are you a believer in anarchy? No Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? No Baerer Club
29. Have you ever been an inmate of an insane asylum? No Swiss Soc.
30. Have you ever been arrested or charged with violation of any law or ordinance, except minor traffic regulation? Yes If so, give full particulars passing Red light Queens N.Y.
2-27-42 B 4-1-40 Fd. 5 —
31. (a) In what place in the United States did you meet for the first time your first witness named on the opposite page? New York (City or town) N.Y.
How often have you seen this witness each month since the date you first met him (her)? every day
At what places? City.
(b) In what place in the United States did you meet for the first time your second witness named on the opposite page? New York (City or town) N.Y.
How often have you seen this witness each month since the date you first met him (her)? every day
At what places? Business
32. Have you ever been deported from the United States, or are deportation proceedings now pending against you? No
If so, state all facts —
33. Was your father or mother ever a citizen of the United States? No If so, give full particulars —
34. Did you yourself fill out this form? Yes If not, who filled out this form for you? —

I certify that all the statements made by me in this application and form are true to the best of my knowledge and belief.

Dec 1941 - Pd 1 - Queens Traffic Ct.
Arrest Wrong 1940 -

Paul Moser (Signature of applicant)
451 E 32 - 35 High St. N.Y.N.Y. (Address of each applicant receive mail)
after Jan 13th 1941 - 43-05 - 36th St. L.I. N.Y. 13

No. 1523890

25

Ex. 7
DENIED

330801-D

Form N-400
U. S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
(Rev. 1-1-46)

Form Approved
BUDGET BUREAU No. 43-R079.42

No. .....

# Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization

*For use in searching records of arrival:*

RECORDS EXAMINED

Card index .....
Index books .....
Manifests .....
.....
.....

Use Form N-215 or N-230 in issuing certificate of arrival on this application.

RECORD FOUND

Place United States District Court
Name Eastern District of New York
Exhibit 7 in evidence
Date June 9, 1949
Manner .....
Marital status .....
Thomas Murphy
Deputy Clerk

TO THE APPLICANT: DO NOT WRITE ABOVE THIS LINE. READ CAREFULLY AND FOLLOW THE INSTRUCTIONS ON LAST PAGE HEREOF.

*Take or mail this application to:*
IMMIGRATION AND NATURALIZATION SERVICE,
[redacted]
70 COLUMBUS AVENUE,
NEW YORK, 23, N. Y.

Date November 10, 19 47

I, Paul Moser (Name of applicant) residing at 71 Transverse Road (Number and street)
Garden City (City or town) Nassau (County) New York (State), desire to file a petition for naturalization in the ..... (Name of court) Court at ..... (City or town) (State) I submit herewith a statement of facts to be used in filing such petition, three photographs of myself, each of which I have signed, and my declaration of intention (first paper), if one is required

I hereby apply for a Certificate of Arrival (if required) showing my lawful entry into the United States for permanent residence. NOTE.—IF THIS APPLICATION IS ACCOMPANIED BY A DECLARATION OF INTENTION (FIRST PAPER) MADE SINCE JULY 1, 1929, ANSWER ONLY QUESTION NUMBER 5 ON THIS PAGE.

(1) I arrived in the United States through the port of New York (City or town) New York (State) on 11 (Month) 10 (Day) 1940 (Year)
under the name of Paul Moser
on the vessel SS "Excambion"
(If arrival was through {Canada / Mexico} I arrived at the port of ..... (If otherwise than by vessel, show manner of arrival) on ..... (Month) ..... (Day) on the vessel .....)

(2) (If arrival by ship) Name of steamship line was American Export Lines, Inc.
first, second, or third cabin Second (State which) I arrived as a passenger, stowaway, seaman, member of crew, or otherwise passenger

(3) The ticket on which I came to this country was bought at Biel (City) (State which, giving particulars) Switzerland (Country)

(4) The steamship ticket on which I traveled was in the name of Paul Moser

(5) I have ..... been absent from the United States as follows: 11/26/45 to 12/29/45 N.Y.P.AA. Flight #NC88884
4/21/46 to 1/10/47 . N.Y.-AirFrance Flight #61/02
7/27/47 to 7/31/47 Ogdensburg, N.Y.a Car.
(Dates of departure and return, ports of entry, and names of vessels or other means)
I have not been absent at any other time.

(6) I was born in Biel (City or town) Switzerland (Country) on 9 (Month) 15 (Day) 1911 (Year)

(7) My father's full name is/was Theodore Moser

(8) My mother's maiden name was Adaline Uhler

(9) (If a married woman) My maiden name was .....

(10) My last foreign residence was Biel Switzerland

(11) The place where I took the ship or train which landed me in the United States was Lisbon (City or town) Portugal (Country)

(12) I traveled on (an immigration visa, a passport, or permit to reenter) Immigration Visa (State which)

(13) I was ..... examined by United States immigration officers at Port of New York, N.Y. (City or town) (State or country)

(14) (If not examined, state why, and give the circumstances of your entry) .....

(15) The person in the United States to whom I was coming was Miss Mary Daniel
New York, N. Y.

(16) The place in the United States to which I was going was .....

(17) The names of some of the passengers or other persons I traveled with, including members of my own family and their relationship to me, if any, are none

16 -11811 4

[OVER]

14

30

(18) In what places in the United States have you resided during the past five years?

New York, N.Y. From Oct. 1942 to date
(City or town) (State) (Month) (Year) (Month) (Year)

From ____ to ____

From ____ to ____

(19) What were the names, occupations, and addresses of your employers during the last 5 years?

Vulcan Steel Product Co. 232 Varet St., Brooklyn, NY, 1940 - 1941, Engineer
(Employer's name) (Occupation) (Number and street) (City) (State) (Type of employment)

Queens Model Engineering Co., 102-02 Corona Ave., Corona, NY, 1942-1945, Manager

Mareg Inc. 24-16 Bridge Plaza So., LIC, NY, 1946-1947, Manager
(Employer's name) (Occupation) (Number and street) (City) (State) (Dates of employment)

(20) Have you read the following oath of allegiance? yes

"I HEREBY declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God."

Are you willing to take this oath in becoming a citizen? yes

Of what country are you now a citizen or subject? Switserland

(21) If necessary, are you willing to take up arms in defense of the United States? yes

Have you ever, during the time this country was at war, deserted the military or naval forces of the United States, or departed from the jurisdiction of the enrollment district or the United States to avoid draft into the military or naval forces of the United States? no

(22) How many times have you ever been married? once

(23) Have you ever been an inmate of an insane asylum? no

(24) Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? yes

If so, give date, place and cause of arrest and disposition of each case

6/13/47 Speed. fined. Traffic Court of Queens.

(25) Have you ever been deported from the United States, or are deportation proceedings now pending against you? no

If so, state all facts

(26) During the last ten (10) years I have been a member of the following organizations and no other

Chamber of Commerce of Queens

(27) Was your father or mother ever a citizen of the United States? no If so, give full particulars

(28) Did you register under the Alien Registration Act of 1940? yes

If so, state the number of your Alien Registration Receipt Card 4906863

(29) If male, did you register under the Selective Service (Draft) Law of 1940 as amended? yes
(Registration number)

If so state your Draft Board No. 14 Located at New York N.Y. N.Y.
(City) (County) (State)

Classified in class 1A, 4A Reason for such classification

(30) Did you yourself fill out this form? yes If not, give the name and address of the person who did

(31) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States. I am not, and have not been for the period of at least 10 years immediately preceding the date of this statement, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. I am able to speak the English language, unless physically unable to do so. I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

I CERTIFY that all the statements made by me in this application and form are true to the best of my knowledge and belief.

(Signature of applicant)

71 Transverse Road
(Number and street)

Garden City, N.Y.
(City) (State)

16—11911-8

15

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## Statement of Facts To Be Used in Making and Filing My Petition for Naturalization

(1) My full, true, and correct name is Paul Moser
(Full true name, without abbreviation, and any other name which has been used since birth)

(2) My present place of residence is 71 Transverse Road, Garden City, Nassau, New York
(Number and street) (City or town) (County)

(3) My occupation is Civil Engineer (4) I am 35 years old

(5) I was born on 9 15 1911 in Biel Bern Switzerland
(Month) (Day) (Year) (City or town) (County, district, province, or state) (Country)

(6) My personal description is as follows: Sex male; color white; complexion fair; color of eyes brown; color of hair brown; height 6 feet 0 inches; weight 175 pounds; visible distinctive marks none; race white; present nationality Swiss

(7) I am ..... married; the name of my wife or husband is Mary
we were married on 10 19 1940 at New York N.Y.
(Month) (Day) (Year) (City or town) (State or country)
he or she was born at Little Neck, Nassau, N.Y. on 10 16 1914
(City or town) (County, district, province, or state) (Country) (Month) (Day) (Year)
entered the United States at (City or town) (State) on (Month) (Day) (Year) for permanent residence in the United States and now resides at (City or town) (State or country) and was naturalized on (Month) (Day) (Year) at (City or town) (State) certificate No. ; or became a citizen by birth

(8) I have 3 children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living are as follows:
Theodore, male, 7/5/41 Born in NYC
Polet " 6/5/45 " " "
Danielle, Female 5/19/47 " " "
All reside in Garden City, N.Y.

(9) My last place of foreign residence was Biel, Switzerland (City or town) (County, district, province, or state) (Country) (10) I emigrated to the United States from Biel (City or town) Switzerland (Country)

(11) My lawful entry for permanent residence in the United States was at New York (City or town) N.Y. under the name of Paul Moser on 10 17 1940 (Month) (Day) (Year) on the "SS Excambion" (Name of vessel or other means of conveyance)

(12) Since my lawful entry for permanent residence I have ..... been absent from the United States, for a period or periods of 6 months or longer, as follows:

| DEPARTED FROM THE UNITED STATES | | | RETURNED TO THE UNITED STATES | | |
|---|---|---|---|---|---|
| Port | Date (Month, day, year) | Vessel or Other Means of Conveyance | Port | Date (Month, day, year) | Vessel or Other Means of Conveyance |
| New York | 4/21/46 | TWA to Geneva | New York | 1/10/47 | Flight #61/02 AirFrance |
| | | | | | |
| | | | | | |

(13) I declared my intention to become a citizen of the United States on ..... (Month) (Day) (Year) in the ..... Court of ..... at (City or Town) (State) 10 11 1940

(14) I have resided continuously in the United States of America since ..... and continuously in the State of New York where I now live since 10 11 1940
(Month) (Day) (Year)

(15) I have ..... heretofore made petition for naturalization No. 330801 on 3 27 1942
(Month) (Day) (Year)
at Brooklyn, New York (City or town) (County) (State) in the United States District Court, and such petition was dismissed or denied by that court for the following reasons and causes, to wit: lack of prosecution, and the cause of such dismissal or denial has since been cured or removed.

(16) I wish the naturalization court to change my name to .....

(17) (1st witness) Abraham Pinson Partner and manager
residing at 42-15 81 Street, Elmhurst, LI, NY
(Number and street) (City or town) (State)
I first met this witness in the United States on .....

(18) (2d witness) Alfred Lynford lawyer
residing at 98-12 Queens Blvd., Forest Hills, LI, NY
(Number and street) (City or town) (State)
I first met this witness in the United States on 1941
(Month) (Day) (Year)

I CERTIFY that the above statement of facts has been read by or to me and that the statement is true to the best of my knowledge and belief.

(Signature of applicant) 71 Transverse Road, Garden City, LI, NY (Address at which applicant can receive mail)

**DO NOT FILL IN BLANKS BELOW**

Affidavit of witnesses to show residence of petitioner as follows:

United States .....

State .....

Examiner .....

**DO NOT FILL IN BLANKS BELOW**

Corrections numbered ..... to ..... in this Preliminary Form for Petition for Naturalization, N-400, were made by me or at my request.

Applicant .....

Date .....

10-11311-1

16

## INSTRUCTIONS TO THE APPLICANT

**Pages 1, 2, and 3 of this form must be completely filled out (preferably on the typewriter).**

**Immigrant Identification Cards and Alien Registration Receipt Cards.**—Every alien who entered the United States for permanent residence on the basis of an immigration visa on or after July 1, 1928, and prior to August 27, 1940, should be in possession of an immigrant identification card. Every alien in the United States should be in possession of an alien registration receipt card. You need not forward either card with this application. However, you will be required to present these cards when you appear to file your petition for naturalization and to surrender them at the time you are admitted to citizenship. You should therefore carefully save your immigrant identification card and your alien registration receipt card.

**Photographs.**—You must send with this application three photographs of yourself taken within 30 days of the date of this application. These photographs must be 2 by 2 inches in size, and distance from top of head to point of chin should be approximately 1¼ inches, must not be pasted on a card or mounted in any other way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. Each of these photographs must be signed by you on the margin and not on the face or clothing.

**Date of your arrival.**—If you do not know the exact date of your arrival in the United States, or the name of the vessel or port, and you cannot obtain this information by consulting your family or friends who came over with you, give the facts of your arrival as you remember them in the appropriate blank spaces on the first page of this form. Your immigrant identification card or your passport, ship's card, or baggage labels, if you have them, may help you to answer these questions.

If the date of your arrival in the United States was on or before June 29, 1906, you should submit with this application documentary evidence of your residence in the United States prior to that date. Such documents may be family bible entries, deeds of record, wills or other authentic legal documents, life insurance policies, bankbooks and records, employment records or other documents showing that you entered the United States on or before June 29, 1906. Do not submit such documents if your arrival in the United States was after June 29, 1906, or if your declaration of intention (first paper) accompanies this application.

**Nationality and Race.**—Nationality in statement No. 6, page 3, refers to the country of which you are a citizen or subject. As to "race" in the same statement, Section 303 of the Nationality Act of 1940 provides that only white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere are eligible for naturalization. There are certain exceptions, in the cases of native-born Filipinos who have served honorably in the United States Army, Navy, Marine Corps, or Coast Guard for a period of at least 3 years, and in the cases of women who have lost United States citizenship through marriage.

As stated above, the following races are eligible for naturalization:

| | |
|---|---|
| White. | Indian. |
| African or African descent. | Eskimo. |
| Filipino. | Aleutian. |

State to which of these classifications you belong.

***WITNESSES.**—The names, occupations, and addresses of two citizens you expect to bring with you as witnesses when you appear for examination to file your petition should be stated in items (17) and (18) on page 3. (These witnesses must have personal knowledge of your residence in the State where you now reside and have resided for the past 6 months, and of your character and other qualifications. A foreign-born witness must bring proof of his citizenship.)*

## PENALTY FOR FALSELY SWEARING IN NATURALIZATION CASES

It is a felony, punishable by a fine of not more than $5,000 or imprisonment for not more than 5 years, or both, for an alien or other person, whether an applicant for naturalization or citizenship, or otherwise, knowingly to make a false statement under oath, either orally or in writing, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization or citizenship. (Nationality Act of 1940, Sec. 346 (a) (d).)

## RESULT OF EXAMINATION

**TO THE APPLICANT—*Do not* write on these lines**

U. S. GOVERNMENT PRINTING OFFICE 16—11311-2

Examiner .....

[fol. 34]

EXHIBIT 8

National Headquarters
Selective Service System
21st and C Street N. W.
Washington, D. C. (25)

In replying address The Director of Selective Service and Refer to No. 11.2.12-271

February 12, 1944

Director of Selective Service for New York City, 1 East 44th Street, New York, New York

Subject: Paul Moser, Local Board No. 14, New York, New York

DEAR COLONEL MCDERMOTT:

The above-named registrant claims exemption from service in our armed forces under the terms of a treaty between the United States and Switzerland of which latter country he states he is a national. As a neutral alien he is entitled to file Form 301 (Application by Alien for Relief from Military Service).

He may obtain an old Form 301 (16-26414-1) from the local board, or he may obtain a revised form 301 [fol. 35] (16-33666-1) from the Legation of Switzerland for execution and filing by him with the local board.

Until the supply on hand is exhausted the old Forms 301 may be used by the local boards in accordance with section 622.43 of the Regulations. However, if a special request is made by a registrant for a revised Form 301, he may secure it by application either to his Embassy or Legation or the National Headquarters through his local board.

For the Director (signed) Harold M. Hayes, Captain, AUS, Alien Section, Manpower Division.

4—301

[fol. 36] EXHIBIT 9

Paul Moser, Order No. 674, 88-10 Whitney Avenue, Elmhurst, L. I., N. Y.

January 29, 1944

Local Board No. 14, 331 Madison Avenue, New York, N. Y.

GENTLEMEN:

This is to inform you that I have taken the necessary steps with the Legation of Switzerland in Washington, D. C., to be released unconditionally from the liability for military service under the provisions of Article II of the treaty of Friendship, Commerce and Extradition, concluded between the United States of America and Switzerland on November 25, 1850.

I shall in due time execute before your Local Board "Form 301 as amended".

Very truly yours, (Signed) Paul Moser.

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[fol. 37] EXHIBIT 10

Legation of Switzerland
Washington, D. C.

February 18, 1944

Mr. Paul Moser, 88-10 Whitney Ave., Elmhurst, L. I., N. Y.

DEAR SIR:

Please be advised that, in accordance with the provisions of Art. II, of the Treaty of Friendship, Commerce and Extradition, concluded between the United States and Switzerland on November 25, 1850, this Legation has requested the Department of State on January 27, 1944 to exempt you from the liability for personal military service with the U. S. Armed Forces.

We are forwarding to you, herewith, two copies of DSS Form 301, *revised*, which kindly execute and file immediately with your Local Board. This action on your part is necessary in order to complete the exemption procedure; your Local Board, in accordance with Selective Service regulations, as amended, will then classify you in Class IV-C.

Please note that, through filing of DSS Form 301, revised, you will not waive your right to apply for American citizenship papers. The final decision regarding your naturalization will remain solely with the competent Naturalization Courts.

Yours very truly, Legation of Switzerland. By ——, (signed) F.

[fol. 38] The Minister of Switzerland presents his compliments to the Honorable the Secretary of State and with further reference to the Secretary's note of July 6, 1942, concerning the liability of Swiss nationals for military service in the United States, has the honor to submit the following additional case of a non-declarant Swiss citizen for unconditional release from the liability for military service, in conformity with Article II of the Treaty of Friendship, Commerce and Extradition of November 25, 1850:

*Paul Moser*

Address: 88-10 Whitney Avenue, Elmhurst, L. I., N. Y.

Order number: 674

Local Board No. 14, 331 Madison Avenue, Room 1004, New York City

The required letter of the above registrant to the Director, Selective Service System, in which he requests to be unconditionally relieved of the liability for military service under the provisions of Article II of the Treaty of 1850, is herewith enclosed.

Department of State
Washington.

—2—

The Minister would appreciate being informed of the final disposition of this case.

*1 Enclosure.*

Washington, D. C., January 27, 1944.

[fol. 39] Feb. 8, 1944.

The Secretary of State presents his compliments to the Honorable the Minister of Switzerland and has the honor

to acknowledge the receipt of his note of January 27, 1944 requesting the exemption from military service of Paul Moser, a non-declarant Swiss national.

The case has been referred to the appropriate agency of the Government for investigation and upon the receipt of a report thereon the Secretary of State will communicate with the Minister.

Department of State, Washington, February 4, 1944.
811.2222 (1940) Moser, Paul.

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[fol. 40] EXHIBIT 11

New York Headquarters
Selective Service System
516 West 34th Street
New York 1, N. Y.

Refer to File 15:HFM
Moser, Paul
Order No. 674
Local Board No. 14
2271-458512

May 13, 1949.

U. S. Department of Justice, Immigration & Naturalization,
271 Washington Street, Brooklyn, New York.

Att: Mr. Harry Addelson

DEAR MR. ADDELSON:

In accordance with your request of May 11, 1949 enclosed herewith is photostatic copy of DSS Form 40—Questionnaire in the case of the above-named registrant.

For the New York City Director (Signed) Ernestine F. Bullis, Chief, Records Division.

Enclosure.

[fol. 41] Selective Service Questionnaire

Order No. 674 Date of mailing 1/9/41

Local Board No. 14
Public School No. 73
209 E. 46th St.,
New York, N. Y.
(Stamp of Local Board)

Name: Paul Moser
Address 451 East 119 St.
N. Y. C.— N. Y.

Notice to Registrant

You are required by the Selective Training and Service Act of 1940 to fill out this Questionnaire truthfully and to return it to this Local Board on or before the date shown below. Willful failure to do so is punishable by fine and imprisonment.

This Questionnaire must be returned on or before 1/15/41.

(Signed) Sidney Rossman, Member of Local Board.

(The above items are to be filled in by the Local Board before the Questionnaire is mailed to the registrant.)

Instructions

This Questionnaire is intended to furnish the Local Board with information to enable it to classify you in one of the following Selective Service classes:

[fol. 42] Class I includes men who are available for induction into the armed forces of the United States.

Class II includes those whose induction is deferred because of the importance to the Nation of the service they are rendering in their civilian activities.

Class III includes those whose induction is deferred because they have persons dependent upon them for support.

Class IV includes those whose induction is deferred by law and those unfit for military service.

You will receive notice from your Local Board of your classification.

Oaths required in the Questionnaire may be administered by (1) a member or chief clerk of a Local Board or Board of Appeal, member or associate member of an Advisory Board

for Registrants, or a Government Appeal Agent; (2) any Postmaster, Notary Public, or any Federal, State, county, or municipal officer authorized by law to administer oaths generally or for military purposes. No fee should be charged for this service.

Advisory Boards for Registrants are organized to assist registrants in completing their Questionnaires. No charge will be made for this service. If there is no Advisory Board available, you must nevertheless complete your Questionnaire.

If the registrant is an inmate of an institution and is unable to complete the Questionnaire, the executive head of the institution shall communicate these facts immediately to the Local Board.

[fol. 43] 1. Make no alterations in the printed matter in this Questionnaire.

2. Write the applicable words in the spaces provided in the Questionnaire.

3. If you furnish additional information or affidavits with your Questionnaire, attach the same securely to it.

4. If you are already in the active military or naval service, obtain a certificate to that effect from your commanding officer and attach same to your Questionnaire.

5. After this Questionnaire has been returned, report to your Local Board at once any change of address or any new fact which may affect your classification.

When a notice affecting you is posted at the office of your Local Board, you are bound to perform the duty required even if no notice reaches you by mail.

Any statements in this Questionnaire marked (Confidential) are for information only of the officials duly authorized under the regulations to examine them.

D. S. S. Form 40.

[fol. 44] (1)

Statements of the Registrant

Series I.—Identification

Instructions.—Every registrant shall fill in all statements in this series.

1. My name is (print) Paul — Moser.

2. In addition to the name given above, I have also been known by the name or names of ——

3. My residence is 32-55 81st Street, Jackson Heights, Queens, New York.
4. My telephone number is N. Y. Illinois 8-1962.
5. My Social Security number is 125-05-1058.

Series II.—Physical Condition (Confidential)

Instructions.—Every registrant shall fill in all statements in this series.

1. To the best of my knowledge, I have no physical or mental defects or diseases.
2. I am not an inmate of an institution.

[fol. 45] Series III.—Education

Instructions.—Every registrant shall fill in all statements in this series.

1. I have completed 5 years of elementary school and 4 years of high school.
2. I have had the following schooling other than elementary and high school:

| Name of Vocational School, College or University | Course of Study | Length of Time Attended |
|---|---|---|
| Engineering Uni. in Switzerland | Engineering | 3 years |
| " " " Germany | Concrete & Steel | 2 years |

Series IV.—Occupation or Activity

Instructions.—All registrants shall fill in statement No. 1 in this series. Every registrant who is now working shall fill in all statements in this series except No. 9. Every registrant who is now prevented from working merely because of some seasonal or temporary interruption shall fill in all statements except statements numbered 2 through 8 in this series.

As used in this series, words such as occupation, work, and job apply to services rendered in any endeavor and to training or preparation for any endeavor,

1. I am working at present.
2. The job I am working at now is (give full title, for example: Construction draftsman, turret-lathe operator, stationary engineer, farm laborer, prosecuting attorney,

[fol. 46] physics teacher, medical student, policeman, marriage license clerk, etc.):

Construction Superint.

3. I do the following work in my present job (be specific—give a brief statement of your duties):

Supervising, organizing & execution of Constr. work.

4. I have done this kind of work for 3 months. (present job).

5. My average weekly earnings in this job are $45. (Confidential.)

6. In this job I am an employee, working for salary, wages, commission, or other compensation.

7. My employer is: Vulcan Steel Products Co., 232 Varet Str., Brooklyn, N. Y.; whose business is Steel & constr. work.

8. Other business or work in which I am now engaged is ——.

(2)

9. If you are not now working because of some seasonal or temporary interruption, attach to this page a statement (a) explaining what the interruption is, when it began, and when you expect to be able to resume your work, and (b) [fol. 47] supplying substantially the same information regarding your last job as is required in the above items in this series.

10. I am licensed in a trade or profession; if so, I am licensed as Civil Engineer.

11. I am not at present an apprentice under a written or oral agreement with my employer.

12. Other facts which I consider necessary to present fairly the occupation which I have described, or my connection with it, as a ground for classification are (if none, write "None"):

Instructions.—You may attach to this page any statement from your employer whihc you think the Local Board should consider in determining your classification. Such statement will then become a part of this Questionnaire.

Series V.—Other Occupational Experience

Instructions.—Every registrant shall fill in this statement from your employer which you think the Local Board

1. I have also worked at the following occupations other than my present job, during the last 5 years:

| Occupation (Give full title; for example, turret-lathe operator, farmer, etc.) | Kind of Work Done (Be specific—give a brief statement of your duties) | Years Worked From— | To— |
|---|---|---|---|
| Civil Eng. & Draftsman | Estimating & Drafting on Public Works | 1937 | 1940 |

[fol. 48] Series VII.—Dependency (Confidential except as to names and addresses of claimed dependents.)

Instructions.—Every registrant shall fill in the statements numbered 1, 2, and 3 in this series.

1. (*a*) I am married.
   (*b*) I married my present wife at New York City on October 19, 1940.
   (*c*) I do live with her. If not, her address is ——

2. I have no children who are under 18 years of age or are physically or mentally handicapped, and who live with me.

3. The following persons live with me in a home maintained by me and are entirely or partly dependent on my earnings from my work in my business, occupation, or employment, and have no other sources of income except as stated below:

Name: Unborn child. Mary Moser: Sex: F. Age at last birthday: 26. Relationship to registrant: Wife. Date when support began. 10.19.40. Dependent's income, last 12 months other than board and lodging provided by the [fol. 49] registrant in his home: Contributed by the registrant: 3 months—$210. Earned by the dependent: 12 months—$900. Received from other sources: None.

8. The income I earned from my work in my business, occupation, or employment during the past 12 months was $2,100 (approx.).

10. The following is a list of all property owned by (or held in trust for) either me or my dependents, the value of

such property, and the net income received by either me or my dependents from such property during the past 12 months: (List this information separately as to the registrant and each dependent. Do not include clothing, personal effects, or household furnishings: or cash less than $500. Indicate which of such property is your home.): None.

11. I do rent the house in which I live. The monthly rent is $42, and the name and address of my landlord is M. Groskin, 11 W. 42nd St., N. Y. C.

12. Other facts which I consider necessary to present fairly my own status and that of my dependents as a basis for my proper classification are: My wife is going to stop working end of January, 1941.

## Series IX.—Citizenship

Instructions.—Every registrant shall fill in the statements numbered 1, 2, 3, and 4 in this series.

[fol. 50] 1. I was born at: Nidau (town), Bern (State), Switzerland (country).

2. I was born on: September 15, 1911.

3. My race is: White.

4. I am not a citizen of the United States.

Instructions.—Every registrant who is not a citizen of the United States shall fill in the statements numbered 5, 6, 7, 8, and 9.

5. I am a citizen or subject of Switzerland.

6. My permanent residence has been in the United States since July 7, 1937.

7. I have filed a declaration of intention to become a citizen of the United States (first papers). Declaration filed at New York on March 1938 under No. —?

8. I have file a petition for naturalization (second papers). Petition filed at New York on October 1940. File No. 2-566741.

9. I have registered with the Alien Registration Division, United States Department of Justice, under the Alien Registration Act of 1940. Registration receipt card number, if received: None.

## Registrant's Statement Regarding Classification

Instructions.—It is optional with registrant whether or not he fills in this statement, and failure to answer shall not constitute a waiver of claim to deferred or other status. The local board is charged by law to determine the classification of the registrant on the basis of the facts before it, [fol. 51] which should be taken fully into consideration regardless of whether or not this statement is filled in.

In view of the facts set forth in this Questionnaire it is my opinion that my classification should be Class III or IV.

The registrant may write in the space below or attach to this page any statement which he believes should be brought to the attention of the Local Board in determining his classification.

1. Expecting a child.
2. Citizen of Switzerland.
3. Approx. 2 years in the armed forces of Switzerland 1st Lieut. Engineers.

## Registrant's Affidavit

Instructions.—1. Every registrant shall make the registrant's affidavit. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the officer who administers the oath.

State of New York,
County of Queens, ss:

I, Paul Moser, do solemnly swear (or affirm) that I am the registrant named and described in the foregoing statements in this Questionnaire, that I have read (or have had read to me) the statements made by and about me, and that [fol. 52] each and every such statement is true and complete to the best of my knowledge, information and belief.

(Signed) Paul Moser (Signature of registrant).

Subscribed and sworn to before me this 15 day of January, 1941. (Signed) Frederic C. Bellinger (Signature of officer). Associate Member of Advisory Board, Local 14 (Designation of officer).

If the registrant has received assistance from an advisor, the latter will sign the following statement:

I have assisted the registrant herein named in the preparation of this Questionnaire.

(Signed) F. C. Bellinger, Advisor.

Minute of Action by Local Board

The Local Board classifies the registrant in Class 3, Subdivision A, by the following vote: Ayes 3, Noes—. Date: 3/4/41.

(Signed) Sidney Rossman, Member.

[fol. 53] Minutes of Other Actions

| | |
|---|---|
| 3/26/40 | Continued 3A (3)—BE |
| 12/27/43 | 1A subject (3)—BE |
| 1/11/44 | Reclassified to 1-A—BE |
| 1/20/44 | After hearing in which registrant stated he wanted to appeal his classification, classification continued in 1A (3)—(illegible) |
| 2/28/44 | Reclassified 4C (3)—BE |
| 10/9/45 | Reclassified 4A—BE |
| 10/15/45 | DSS form 57 mailed |

[fol. 54] Exhibit 12

New York City Headquarters, Office of Selective Service Records,

516 West 34th Street, New York 1, N. Y.

Refer to File No. TJH

April 12, 1948.

U. S. Department of Justice, Immigration and Naturalization Service, 271 Washington Street, Brooklyn 1, New York.

Subject: Moser, Paul, Order No. 674, Local Board No. 14

Refer to: 2271-458512 C, Brooklyn Unit

Gentlemen:

Receipt of your letter containing authorization of the above-named registrant for release of information from his file is herewith acknowledged.

In response to your request, we list herewith in chronological order classifications and reasons therefor received by this registrant:

March 4, 1941—Class III-A—based on dependency
January 11, 1944—Class I-A—available for service
February 28, 1944—Class IV-C—alien, based on Form 301 filed by him, copy of which is enclosed.
[fol. 55] October 9, 1945—Class IV-A—overage for any military service.

Very truly yours, (Signed) Candler Cobb, New York Director.

Enclosure: 1.
Certified copy of DSS Form 301

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[fol. 56] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

Petition No. 458512

In the Matter of the Petition of Paul Moser, to be admitted to become a citizen of the United States of America

TRANSCRIPT OF PROCEEDINGS

Brooklyn, New York.
March 10, 1949.

Before Honorable Harold M. Kennedy, U. S. D. J.

Appearances:

Morris E. Vogel, Esq., Attorney for Petitioner.
Mr. Harry Addelson, Examiner for the United States Immigration and Naturalization Service.

Mr. Addelson: The record discloses that on February 26, 1944, the petitioner, a native and national of Switzerland, [fol. 57] filed DSS Form 301 with his local Draft Board applying for relief from training and service in the land or naval forces of the United States under the Selective Training and Service Act of 1940, as amended. Section 3(a) of this Act provides that a national of a neutral coun-

try who applies for relief from training and service should thereafter be barred from becoming a citizen of the United States. Inasmuch as the petitioner, while a citizen of a neutral country, applied for relief from training and service in the armed forces of the United States, he is barred from naturalization on a decision recently rendered to which your Honor has referred.

The recommendation is for a denial.

The Court: What alternative have I?

Mr. Vogel: If your Honor please, I have prepared a memorandum but I shall also set out orally the fact that this petitioner is a native and citizen of Switzerland, that exemption was obtained for him through the Swiss Legation after negotiations between the Swiss Legation, and our State Department. As a direct result of negotiations between the two countries DSS Form 301 was expressly modified, and the express waiver by the petitioner was delimited and removed—

The Court: You mean deleted?

Mr. Vogel: That is right, it was deleted, and they prepared a revised form which they delivered to the Swiss Legation for submission to the various Swiss nationals who wanted to take advantage of a treaty existing between the two countries.

Now, this treaty, Article II of the Convention of Friendship and Commerce, was executed in November, 1850, and has existed throughout all these years. By express pro- [fol. 58] vision of said Article II a citizen of either country residing in the other was free from personal military service in the other country. I therefore maintain that the execution of this DSS Form 301 was in reality a nullity, because he did not secure the exemption by virtue of that form but rather under the treaty. As a matter of fact, the application to the Draft Board was in that vein. And I point out to your Honor that the Swiss Legation notified Mr. Moser that they had made application in his behalf, and instructed him to execute the revised Form DSS 301 as distinguished from the old form in order to reserve to himself the right to apply for naturalization, and leave it to the Court to determine the effect of the treaty on the Selective Service Act.

The Court: He signed a revised form, did he?

Mr. Vogel: He did.

The Court: What have you to say about that?

Mr. Addelson: This is the first I knew about any of this.

Mr. Vogel: Here it is (producing paper).

Mr. Addelson: This is a form I got from the Draft Board, which is just the same as any other form.

Mr. Vogel: If your Honor will look at my memorandum of law, you will find that the old form contained in the body a direct statement that "I understand that the making of this application to be relieved from such liability will debar me from becoming a citizen of the United States." That was deleted from the revised form.

The Court: Do you see it?

Mr. Addelson: It has the same thing down here.

The Court: It is under his signature. It is not a waiver, it is just a notice.

[fol. 59] Mr. Vogel: He had already been advised that this did not apply to him.

The Court: He tells the Draft Board and they certainly have been warned, he notified them that he did not waive his right to citizenship under 301. And so we get to a question of law whether the Selective Service Law overrides the treaty, or the treaty not having been abrogated can exist side by side with 301.

Mr. Addelson: It seems to me to be a personal matter between the petitioner and the United States Government. I do not see why we should hark back to a treaty with Switzerland in this case or in any other case.

The Court: In this case the petitioner was an officer in the Swiss army, and when he was asked to register under the Selective Service Law he asked for and secured that advice from the local Swiss Consulate, who then by appropriate correspondence with Colonel McDermott told him that this man was not renouncing any rights to future citizenship by his claim of relief from military service, because his claim for relief from military service was by virtue of a treaty. He then subscribed to Form 301, which was amended so that he did not waive or renounce his right to become a citizen, and he comes to this court claiming that relief.

Therefore if present recommendation for denial is based on the supposition that his application is based on 301, that supposition is ill-grounded.

Mr. Addelson: I would like to have this case continued.

The Court: I think it should be.

Mr. Addelson: Because I would look into this further myself, because this is an entire surprise to me.

[fol. 60] The Court: For your purposes the record should contain the following:

That at the first hearing the petitioner offered in evidence a revised form of application by an alien dated February 28, 1944. In conjunction with that he displayed to the Court and offered in evidence a letter signed by him and addressed to local Board 14, 331 Madison Avenue, a letter dated January 29, 1944, in which he expressly stated that his application for relief from service was based on a treaty between Switzerland and the United States executed on November 25, 1850, and still in force. He also showed a letter from the Swiss Legation to him dated February 18, 1944, advising him that he would not waive his right to apply for citizenship by claiming exemption. He also showed a letter from the Alien Section of the Selective Service addressed to Colonel McDermott, dated, stamped February 12, 1944, in which Selective Service itself acknowledged through one Harold M. Hays, who spoke for the director, calling attention to the fact that the claim for exemption in this case is by virtue of a treaty, and also stating that Form 301 would be revised to fit the needs of the case, referring undoubtedly to the form signed by the applicant; and over his signature there is no waiver of citizenship or right to claim citizenship as there is in the former form.

In view of the fact that this comes as a surprise to the Bureau I will continue the matter to such time as may be agreed upon.

Mr. Addelson: I would like to have ninety days.

The Court: At the suggestion of the Examiner this matter will be continued for ninety days.

I also hand you, the Examiner, a copy of petitioner's memorandum which I suggest you scrutinize.

[fol. 61] I suggest to the Bureau in its present form the opposition to the granting of the petition is ill-grounded because it proceeds upon the assumption that the petitioner signed Form 301 containing an express waiver for citizenship, and that the only opposition now tenable would be on the theory that the treaty was overridden and repealed by virtue of the Selective Service Act. Even so there still does not appear on the record anywhere a waiver by the petitioner of his right to apply for citizenship.

If there is no objection I will retain jurisdiction over the cause, and should it appear that the date can be advanced by agreement, I presume I will be notified so that I may set it for an earlier date.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

(Signed) Eli C. Trumbower, Official Court Reporter, U. S. District Court.

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[fol. 62] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

Petition No. 458512

In the Matter of the Petition of PAUL MOSER, to be admitted to become a citizen of the United States of America

**Transcript of Testimony and Proceedings**

Brooklyn, New York, June 9, 1949.

Before Honorable Harold M. Kennedy, U. S. D. J.

APPEARANCES:

Morris E. Vogel, Esq., Attorney for the Petitioner.

Mr. E. A. LaMothe, Mr. Harry Addelson, Examiners for the United States Immigration and Naturalization Service.

[fol. 63] PAUL MOSER, the petitioner, having been first duly sworn, testified as follows:

The Court: Mr. Moser, the last time you were here there was a question whether or not you had claimed that under the Treaty of Switzerland you had a right not to be drafted. Do you remember that?

The Witness: That is right, sir.

The Court: And you said that the form which they gave you to fill out and sign was not agreeable to that treaty and that you took steps through your Consul to have a form furnished you which did not contain the statements that you in effect waived your right to become a citizen. Do you remember that?

The Witness: That is correct.

The Court: And that Counsel furnished that form here and on that basis I took a continuation of the case?

The Witness: Yes, sir.

The Court: So that it could be explored. Now at the time of the signing of that form had you already filed a petition for citizenship?

Mr. Vogel: No, your Honor; you mean at the time he signed that application.

The Court: Yes.

Mr. Vogel: No, the petition was filed in 1948.

Mr. Addelson: It was filed in 1942; he had a petition already on file.

Mr. Vogel: Oh, no; the present petition that is pending before your Honor.

The Court: I am not speaking of that.

[fol. 64] Mr. Vogel: I am sorry.

The Court: At the time you signed that form—what do you call it?

Mr. Addelson: DSS 301.

The Court: Didn't you already have a petition for citizenship on file?

The Witness: No.

The Court: Hadn't there been one filed by you in 1942?

The Witness: Yes, your Honor.

The Court: Didn't you say in this form, "I have not declared my intention to become a citizen of the United States."

The Witness: Your Honor, after my return from Switzerland in 1940 I had a first paper, paper for 1940, the immigration officer took that paper away and told me I have lost my rights since I re-entered the States on an immigration visa, I could not enter under that; so in 1942 I went down to the old immigration house in Washington Street on the river there and I asked them if I am eligible for citizenship and the fellow told me who examined it, that I cannot do that since I lost my first papers and that I am regarded as immigrated on a new immigration quota in 1940, that I have to take out new first papers or wait three years. I married an American citizen.

The Court: Well, the point of inquiry is simply this: In your correspondence with your consulate you emphasized the fact that the treaty protected you only if you were a non-declarant.

The Witness: That is right.

[fol. 65] The Court: Now, were you or were you not a non-declarant at the time you signed this paper on February 28, 1944?

The Witness: At the time I was a non-declarant.

The Court: Well, you had previously filed a declaration, hadn't you?

The Witness: Yes, but the immigration authorities told me that I have lost that since I left this country.

The Court: They told you those papers were null and void?

The Witness: That is right, they took them away.

The Court: What did they take away?

The Witness: The first papers.

The Court: What did you have in the shape of first papers?

The Witness: It was a paper with my photograph on.

The Court: A paper with your photograph on it?

The Witness: Yes, sir.

The Court: Do you know what it is?

Mr. LaMothe: That is the declaration of intention, but that was submitted with his application when he filed his petition. We never take anything away from anybody.

The Court: Now, to keep the record straight, this paper dated February 28, 1944 will be marked Court's Exhibit 1.

(Marked Court's Exhibit 1.)

The Court: Is this your signature on this paper?

The Witness: Yes, sir.

[fol. 66] The Court: This paper will be marked Court's Exhibit 2.

Mr. LaMothe: No, that is part of the Court record.

The Court: Will be deemed marked Court's Exhibit 2, it being a declaration of intention dated March 9, 1938 and bearing the serial number——

Mr. LaMothe: On the top, Judge, on the right hand corner.

The Court: It has several numbers—411089, also 458512, also 330801. There is also a certification number.

Mr. LaMothe: That is the original number applied to his application when it was first received. It is 2/, isn't 2/ something?

The Court: Yes.

Mr. LaMothe: That is our symbol. Now on the top there is another number that is awarded to the first paper by the clerk's office; I believe that is 341 something, it is a 300,000 number.

The Court: 330.

Mr. LaMothe: And then the applicable number is applied to his petition, that is given when he appears with his two witnesses and files his petition with the clerk's office.

The Court: Yes.

Now I will also have marked, please, the letter of the Vice Consul, dated February 3, 1944, which is Court's Exhibit 3.

(Marked Court's Exhibit 3.)

[fol. 67] The Court: I will also have it marked, please, two carbons of letters, one dated January 24, 1944 and the other dated January 25, 1944.

(Marked Court's Exhibits 4 and 5.)

The Court: Have you seen those letters, Mr. Addelson?

Mr. Addelson: No, I didn't.

The Court: That was in January, he made a full disclosure to the consul.

Mr. Vogel: I just want——

The Court: Go ahead, Mr. Addelson.

Mr. Addelson: May I be permitted to ask the petitioner some questions?

The Court: There is a written document that shows he told the Consul General all about his application, it couldn't have been concocted.

By Mr. Addelson:

Q. What is your occupation, Mr. Moser?

A. A civil engineer.

Q. And you had your education over in Europe?

A. In Switzerland, yes, sir.

Q. And how old are you?

A. Now?

Q. Yes.

A. 37.

Q. You filed a declaration of intention according to the record in 1938?

A. That is correct.

Q. And you left the United States in 1940?

A. Yes, sir.

[fol. 68] Q. Did you leave the United States with the idea of abandoning your residence in this country?

A. I left the United States at that time to join the Swiss Army and I did not give it any thought, that times were so insecure, how long I have to stay in the Army, it was in the beginning of the war. However, my intentions were always to return to the United States.

Q. And you say that you were told by an immigration officer after your return that your residence before didn't count, that everything you did before didn't count; is that right?

A. That is correct.

Q. When you submitted your application to file a petition for naturalization you gave as your arrival, your original residence on December 29, 1937?

COLLOQUY

Mr. Vogel: I object to that, your Honor. That isn't correct. I have a duplicate in my office.

Mr. Addelson: I have the original here.

The Court: Let me see them both.

Mr. Vogel: If there were any changes made, I don't know.

Mr. Addelson: I am talking about the first petition. You are talking about the second one.

Mr. Vogel: I am talking about the petition presented in court today—I am talking about the petition here in court. This is the one we filed and it says that he arrived in 1940.

The Court: What is the last exhibit number?

The Clerk: 3.

The Court: That cannot be. Now the record should reflect the following:

That the photostat copy of the form DSS 301 revised is Exhibit 1.

[fol. 69] The declaration of intention, whose numbers I have already given—330801, 411089, 458512—dated March 9, 1938 is deemed to be marked Exhibit 2.

The letter from the Consulate General dated February 3, 1944, signed by Charles E. Rosset is Exhibit 3.

Copy of a letter addressed to the Consulate General of Switzerland dated January 24, 1944 is Exhibit 4.

Copy of a letter to the Swiss Legation dated January 25, 1944 is Exhibit 5.

Mr. Addelson produces a petition on form A-2214.

Mr. Addelson: That is an application to file a petition.

The Court: An application on form A-2214, hand printed, bearing various corrections in red ink. That is deemed to be Exhibit 6.

Mr. Vogel produces a typed copy of form N-400, unsigned and undated. That is Exhibit 7.

Now to add to that should be a photostatic copy of a letter from Harold M. Hayes to the director of Selective Service for New York, which is Exhibit 8.

A letter from Paul Moser dated January 29, 1944 to Local Board No. 14, marked Exhibit 9.

A letter from the Legation of Switzerland to Paul Moser dated February 18, 1944, marked Exhibit 10.

Now, I don't know what the solution of the discrepancies between these two papers——

Mr. Vogel: If your Honor please, I believe I can explain because I used to work in the immigration bureau in the capacity of examiner.

[fol. 70] Now, the procedure is this: Applicant files a paper, of which I gave you a copy. When the applicant appears with his witnesses before the preliminary examiner, he is called alone, of course counsel is not present, the preliminary examiner makes corrections which are to conform to any questions he puts to the applicant and also to any documents he may have in the file.

Now, although our application recites an arrival of 1940, the file of the immigration service probably showed also the original arrival prior to his departure for service in the Swiss Army, and the preliminary examiner, either erroneously or because he felt it didn't make any difference, took the original arrival and you will probably find that change in red ink.

Mr. Addelson: Your Honor, might I say something?

The Court: Yes. I wanted to see if I could find the solution because the two papers are entirely different.

Mr. Vogel: Are you looking at the petition that was filed in 1948?

Mr. Addelson: Your Honor, I think I can explain this thing without any trouble if I am permitted, if I may.

The Court: Go ahead.

Mr. Addelson: This man filed two petitions for naturalization. Both of these petitions are predicated on entries dated December 27, 1937. There was a question raised in connection with his first petition by reason of the absence which he refers to and which he said he came back [fol. 71] and was notified by the immigration authorities that his residence was broken and so forth.

The Court: Yes.

Mr. Addelson: A question and answer statement was taken from the petitioner by an officer of this service on February 5, 1943 in connection with his original petition for naturalization. At that time the petitioner stated that when he left the United States it was his full intention to return to this country and the facts relative to his absence were submitted to our central office in Washington and they ruled that there was no break of residence there at all and they authorized us to continue with the petition for naturalization filed in 1942. I want to introduce that as an exhibit.

According to our records, the petitioner was notified on four different occasions to appear for final hearing on his petition filed in 1942. He was notified on June 5, 1944—was absent. He was notified on January 29, 1945 and was absent. And he was notified on March 19, 1945 as well as on April 30, 1945. His petition was finally dismissed for lack of prosecution on July 5, 1945.

He knew at the time that he filled out DSS form 301 that his residence was dated from 1937, he had a declaration of intention on file at that time, and I might add that he first registered for Selective Service in the early part of 1941 right when the first draft started, right before the war, and on March 4, 1941 he was placed in Class 3-A because of dependency. Wasn't that true?

[fol. 72] The Witness: I don't remember whether it was dependency or not.

Mr. Addelson: But you were placed in Class 3-A, weren't you?

The Witness: I think so.

Mr. Addelson: You knew that that was a deferred classification.

The Court: He didn't claim any exemption. Did he claim exemption, Mr. Addelson?

Mr. Addelson: I have got the original form here showing

the reasons that he thought he ought to be placed in Class III or IV.

The Court: He didn't claim he was a neutral and couldn't be made to serve.

Mr. Addelson: He gave three reasons why that was: That he was expecting a child, that he was a citizen of Switzerland, and that he was for approximately two years in the armed forces of Switzerland—that is what he stated there—and on January 11, 1944, according to—and I want to introduce both of these documents in evidence—according to a letter from the Selective Service records, he was placed in Class 1-A as available for service. It was after that that he himself got in touch with the Swiss Consulate to be relieved from service under the Swiss treaty. Now, apparently there was some correspondence between the petitioner——

The Court: Not apparently, I have a copy of it here.

Mr. Addelson: I am quoting:

"There exists, therefore, now the possibility that such exemption can be obtained by compatriots who qualify, [fol. 73] without the necessity of forfeiting the right thereafter to become an American citizen, if the request is based on Article II of the treaty of friendship, commerce and extradition, between the United States and Switzerland of November 25, 1850. Such a petition, however, can only be submitted by the Legation on behalf of the non-declarant Swiss registrant."

And then he wrote this letter to the Swiss Legation:

"As a non-declarant Swiss national, I claim unconditional release from the liability for military service under the provisions of Article II of the treaty of friendship, commerce and extradition, concluded between the United States of America and Switzerland on November, 1850."

The Court: Please bear with me a minute while I call your attention to this: Your claim is substantially fraud. On January 24, 1944 this man wrote to his Consulate General as follows:

"In 1937 I immigrated to the U. S. A. from Canada and shortly after I took out first papers. On May 11, 1940 I returned to Switzerland to join our Army in the field. Upon

leaving this country I did not take out a re-entry permit and I lost so all rights ever to return as a resident of the U. S. A. In September 1940 I was forced to apply on the U. S. Consulate in Zurich for a new immigration visa, and I arrived in New York, on October 11, 1940 under a new immigration quota."

Now, I will not find fraud in the face of that letter.

[fol. 74] Now, if he in good faith told the Swiss Consul, "I am a non-declarant and claim my rights under the treaty," and he signed this revised form DSS 301, which I find as a fact, what are the legal results that flow from it?

Mr. Addelson: I say that the statute supersedes the treaty, and I have got several citations here to back up my position, your Honor.

The Court: You say that the Selective Service Act revokes that treaty?

Mr. Addelson: Supersedes the treaty in so far as it is inconsistent with the treaty.

The Court: What about the action of the Selective Service in changing the form, which is an administrative interpretation of its own power? Is this man to be the goat?

Mr. Addelson: I can't see how he is the goat. It is on the same form, it is written as plain as can be.

The Court: We have gone all over that backwards and forwards.

Now had this man been told plain out by the Selective Service that the Selective Service Act supersedes the treaty non-constat, he wouldn't have signed the form at all. He might have said, "Very well, I am going to serve." Don't you recognize any equity in his position?

Mr. Addelson: I am not so sure that he would have served if he did know.

The Court: Mr. Moser, if they had said to you, "Although the treaty is in existence, we, the United States of America, won't recognize it and if you claim an exemption [fol. 75] from service as a neutral you are forever barred from citizenship," would you have made such a claim?

The Witness: I would have served, your Honor.

The Court: Your wife is an American?

The Witness: She is an American citizen.

The Court: I find as a fact as follows in this case——

Mr. Addelson: May I have the permission to submit a brief in this case?

The Court: Surely, on the law alone.

Mr. Vogel: He has had my memorandum for three months.

The Court: I am not going to make any snap judgment. He has made a remarkable statement that the Selective Service Act supersedes the treaty with Switzerland. He is asking me to hold that as a matter of law and I want to see those cases, I am ignorant about them.

The facts in this case are as follows:

The petitioner, Moser, filed a petition for citizenship. It then developed that on February 26, 1944, he had filed with the Selective Service Local Board 14, an application for release from military service. This application was on a revised form DSS 301. There isn't in the body of that form any reference to Section 3a of the Selective Training and Service Act of 1940, as amended.

It then developed that on February 3, 1944—no, that on January 24, 1944 Moser had written to his Consulate General, he explained in the letter, which is in evidence, the fact that on a prior occasion, in 1937, he had applied for citizenship but he then believed that he lost his right to first papers as a result to return to the Swiss Army.
[fol. 76] At that time, on January 24, 1944, he took the position that he should be deferred from service because he had the status of an alien without first papers.

By supplementary letter of January 25, 1944 he furnished further facts.

On February 3, 1944 he was advised by the Consulate General of Switzerland, the letter which is in evidence, that since Moser was a non-declarant Swiss alien he could be unconditionally released from service.

The legation of Switzerland notified him, also by a letter, on February 18, 1944, that he had rights under the Treaty of Friendship, Commerce and Extradition concluded between the United States and Switzerland on November 25, 1850. The letter states that the legation was requesting the Department of State to exempt him from liability, and also there was included a DSS form 301, revised, the word "revised" being underlined. He was then advised by the legation that through the filing of form DSS 301, "You will not

waive your right to apply for American citizenship papers."

On these facts, it is necessary to find that if the treaty between Switzerland and the United States is still in force, Moser is surely entitled to citizenship, there was no fraud of any kind on his part, he honestly believed that he was a non-declarant alien, he honestly believed that he had lost any benefit obtained by his first papers. He made full disclosure of the fact in connection with his claim of exemption, and nobody advised him that the fact that he had filed [fol. 77] first papers, which lapsed, had any effect upon his rights.

It is my belief, and I find as a fact, that if in January, 1944, he had been told that the Swiss treaty was superseded by the Selective Service Act and that he must face the choice either of serving in the American Army or waive forever his right to become an American citizen, that he would have elected to do the former. Any other interpretation of these facts is impossible in the light of the fact that he had an American wife and three children here.

The only question is whether or not that Treaty was in force in January, 1944—if it was, whether there is any way that Moser can be restored to his status quo, namely, can still obtain citizenship, in spite of the fact that as a matter of dry legal context he may have inadvertently waived that right.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

(Signed) Frank J. Carey, Official Court Reporter, U. S. District Court.

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[fol. 78] In United States District Court

[Title omitted]

Approval of Counsel Fees—July 21, 1949

The Court: I approve the arrangements between the petitioner and his attorney for his fees covering all services [fol. 79] to the petitioner, including all disbursements of all kinds up to the present date.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

(Signed) Daniel D. Simon, Official Court Reporter, U. S. District Court.

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[fol. 80] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

No. 458512

In the Matter of Petition of PAUL MOSER for naturalization

Appearances:

Harry Addelson, U. S. Naturalization Examiner, attorney for government.

Morris E. Vogel, attorney for petitioner.

OPINION OF THE COURT—July 15, 1949

KENNEDY, J.:

This controversy arose out of a petition for naturalization. Proof was taken at two brief sessions, and at the close of one I dictated findings of fact, which I need advert to only briefly here for the sake of clarity.

The petitioner is 38 years of age and a native of Switzerland. He is the father of three children, all of whom are native-born citizens of the United States. He originally entered the United States in 1937 and on March 9, 1938, he petitioned for naturalization in the Southern District of New York. But before action on this petition was completed and on May 11, 1940, Moser, who was then an active officer of the Second Engineers Battalion of the Swiss [fol. 81] Army and on leave of absence, was ordered to return to Switzerland, because at that time the Swiss feared an attack by the Nazis. In October 1940 Moser was permitted to return to the United States. He still retained his status as an active officer in the Swiss Army in the same regiment, but was again on leave of absence. In 1945 he was placed on reserve. In the meantime on October 19, 1940, the petitioner registered under the Selective Training and Service Act of 1940, as amended. He at that time requested the advice of the Swiss Legation with respect to his

obligation for military service in the armed forces of the United States, having in mind particularly, the Convention of Friendship, Commerce, Extradition, etc. between the United States and the Swiss Confederation, concluded on November 25, 1850 (11 Stat. 587; Malloy's Treaties and Conventions, Volume 2, p. 1763).

The Swiss Legation then took the matter up with the State Department, and after a number of conferences, our own State Department decided that the Selective Training and Service Act of 1940 was not intended to deny Swiss nationals any rights or privileges conferred on them by the treaty. Accordingly, through correspondence with the selective service authorities, the American State Department expressed the view that the filing of a claim for exemption from military service by non-declarant friendly aliens like Moser should not operate as a waiver of forfeiture of naturalization rights. The form for such claims of exemption, referred to as DSS Form 301, was then revised particularly to exclude a sentence reading in part as follows:

> "I understand that the making of this application, to be relieved from such liability, will debar me from becoming a citizen of the United States * * *"

[fol. 82] In the form as revised, reference to the legal effect of a claim to be relieved from liability for training and service was merely dropped into a footnote so that instead of being a part of the document itself, it operated merely to call attention to the provisions of the statute. However, that in Moser's case even the footnote is meaningless is evidenced by the correspondence between himself and the Swiss Legation, and between the Legation and the State Department, this undeniable effect of which is that our own State Department took the position that the treaty rights of Swiss nationals were preserved and that they could claim exemption from American military service (at least while they were non-declarants) without waiving rights to naturalization in the future.

When the case first came for hearing, the naturalization service was clearly under the impression that Moser had signed the original form DSS 301, which amounts to an express waiver of naturalization in the future. Moser's attorney called attention to the fact that this was not the

form of waiver that his client had signed; that on the contrary he had executed a waiver revised by agreement reached by the State Department, the Swiss Legation, and the Selective Service Bureau. Moser had signed this revised form on February 26, 1944.

The Naturalization Service then asked for a continuance on the ground of surprise, which was granted. At the continuance it proposed a new theory why naturalization should be denied; it said that Moser had perpetrated a fraud in procuring and executing the revised form DSS 301, because as a matter of fact he was not then a non-declarant alien, but had filed a petition for citizenship in 1938. Moser's uncontradicted explanation of the facts in that con- [fol. 83] nection were as follows: After he had filed his petition, he was, as noted above, ordered back to Switzerland. When he was able to re-enter he was told by the authorities that he would need a new visa, and would re-enter under the 1940 quota, which he did. He discussed this with someone in the naturalization bureau who told him that this had the effect of invalidating his then pending application for citizenship, a statement which he believed to be true. And the record bears this out, because in all the proceedings in connection with the first petition Moser failed to appear and the petition was ultimately dismissed. The filed papers in the first case also strongly bear out Moser's contention that it was void in the light of his departure for military service in the Swiss army. But more important than all this: Moser made full disclosure of his first petition to the authorities when he attempted to clarify his treaty rights.

Faced with these facts, the naturalization bureau then fell back on the claim that the Selective Training and Service Act of 1940, as amended, superseded the treaty made between the United States and Switzerland in 1850, and that no matter what our State Department or selective service bureau had done, Moser, as matter of law, had waived his right to become naturalized, even though his specific intention to the contrary was proved and even though American government agencies had induced him to sign the "waiver" while they were under a completely erroneous notion of what the law was.

To support this remarkable contention, the bureau cites a number of cases, but I shall refer particularly to one of these (*In re Trachsel*, D. C. S. D., Ohio, W. D., 1921, 271 F.

779). Trachsel was a *declarant* alien and a citizen of Switzerland. His declaration of intention contained a renunciation of allegiance and fidelity to the Swiss Confed- [fol. 84] eration. (*Cf.* Moser's case: when he filed the instant application he was in the judgment of both the American and Swiss authorities a non-declarant alien after full disclosure by him of the proceedings in connection with his first petition.) Trachsel claimed his rights under the same treaty as that invoked by Moser, and in dealing with this fact the court in the *Trachsel* case lays down the law that an act of Congress later than a treaty supersedes the latter. The bureau quotes that sentence but omits to continue the quotation to include the very next sentence, which points out that the local board honored Trachsel's claim for exemption, and that its action was not under review by the court dealing with Trachsel's case. In other words, the case is no authority at all on the point here involved.[1]

But, ignoring the precedents, it is perfectly obvious that to the extent treaties may be affected, the pertinent language of the Conscription Act of 1917, 50 U. S. C. A. §226 note, is very different from that found in the Selective Training and Service Act of 1940. The 1917 act imposed a liability to military service upon all male citizens not alien enemies who had declared their intention to become citizens. This express provision might well be considered an evidence of intention on the part of Congress to supersede pro tanto all treaties inconsistent with such liability. The 1940 act on the contrary imposes a liability (Section 3(a)) on all male citizens of the United States and all male persons residing in the United States. There is then a proviso that any neutral citizen may relieve himself from liability, and a further proviso that if he does, he shall thereafter be debarred from becoming a citizen of the [fol. 85] United States. But this proviso may not be at all inconsistent with a treaty such as the Swiss Treaty of 1850, which relieves its nationals of liability to American military service.

But to me it means that verbal gymnastics in this case become quite irrelevant. Nothing could be clearer than the fact that our own State Department recognized the im-

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[1] The decision is merely that Trachsel abandoned his petition when he claimed exemption.

munity that Moser had under the treaty. Nor could anything be plainer, to me at least, than the fact that Moser never would have signed the revised form DSS 301 if it were to be treated as a waiver of naturalization in the future. And so, assuming that the State Department made an egregious error, concurred in by the Selective Service Bureau and the Swiss Legation, I cannot see how that can be translated into a waiver by Moser of an important privilege, no matter what he signed upon the advice of these responsible agencies. In other words, even if the Swiss treaty was intended to be broken by those who enacted the Selective Training and Service Act of 1940, I find as a fact that there never was a waiver of naturalization by Moser and that the petition should be granted.

Harold M. Kennedy, United States District Judge.

Dated: Brooklyn, New York, July 15, 1949.

This opinion is reported in 85 F. Supp. 683 (D. C., E. D. N. Y., 1949).

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[fol. 86] IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Title omitted]

STIPULATION AS TO RECORD ON APPEAL

It is hereby stipulated and agreed by and between the attorneys for the parties in the above matter that the foregoing is the record of the United States District Court for the Eastern District of New York in the above entitled cause, as agreed upon by the parties.

Dated: Brooklyn, New York, March —, 1950.

J. Vincent Keogh, United States Attorney, Eastern District of New York, Attorney for United States of America, Appellant. Morris E. Vogel, Attorney for Appellee.

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[fol. 87] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 88] UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1949

No. 227

(Argued May 5, 1950. Decided June 14, 1950)

Docket No. 21642

In the Matter of the Petition of PAUL MOSER to Be Admitted to Become a Citizen of the United States of America,

UNITED STATES OF AMERICA, Appellant,

PAUL MOSER, Appellee

Before L. Hand, Chase and Clark, Circuit Judges

Appeal by the United States from an order of the District Court for the Eastern District of New York admitting an alien to citizenship. Reversed.

[fol. 89] Morris E. Vogel, Attorney for Appellee.

J. Vincent Keogh, United States Attorney, Attorney for United States of America, Appellant.

Edward S. Szukelewicz, Assistant United States Attorney, of Counsel.

CHASE, Circuit Judge:

Paul Moser, a native and citizen of Switzerland, was admitted to the United States on December 29, 1937 for permanent residence. He filed a declaration of intention to become a citizen in the District Court for the Southern District of New York on March 9, 1938 but on May 11, 1940 left voluntarily for Switzerland where he served as an officer in the Swiss Army until he was released from such duty in the fall of that year. He reentered the United States lawfully on October 11, 1940 as a non-quota immigrant returning to an unrelinquished domicile and has since resided in the City of New York. He married an American citizen on October 19, 1940 and has three children born in this country of that marriage.

On March 27, 1942 he filed a petition for naturalization alleging his marriage as above stated and claiming the exemptions accorded the spouses of citizens under the

provisions of the Nationality Act of 1940. 8 U. S. C. § 710 (b). This petition was dismissed in July 1945 for lack of prosecution.

Meanwhile he had registered in accordance with the provisions of the Selective Training and Service Act of 1940, 50 U. S. C. App. § 301 *et seq.*, and on January 15, 1941 had filled out a questionnaire in which he requested either Class III or Class IV classification. He was classi- [fol. 90] fied in Class III-A. On January 11, 1944, however, his classification was changed to I-A and on January 24, 1944 he applied to the Swiss Consulate in New York for assistance in obtaining deferment.

Article II of the Treaty of November 25, 1850 between the United States and Switzerland was in force at all times now material and provided, so far as here relevant, that

"The citiz ıs of one of the two countries, residing or established in the other, shall be free from personal military service; but they shall be liable to the pecuniary or material contributions which may be required, by way of compensation, from citizens of the country where they reside, who are exempt from the said service."

He desired to take advantage of the above quoted provisions and the Swiss Legation at Washington was so informed. It had previously had some conversations with our Department of State in which it had put forth its view that Swiss nationals were entitled to deferment under the treaty without being thereby debarred from becoming American citizens in accordance with the provisions of the Selective Training and Service Act of 1940, 50 U. S. C. App. § 303(a).

The above section of the statute contained a proviso "that any citizen or subject of a neutral country shall be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President, but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States; * * * " And Section 316(a) of Title 50, U. S. C. App. provided that, "except as provided in this Act, all laws and parts of laws in conflict with the provisions of this Act are hereby suspended to the extent of such conflict for the period in which this Act shall be in force."

[fol. 91] As a result of the efforts of the government of Switzerland and of those made by other governments hav-

ing similar treaty exemptions for their nationals, the form, known as DSS Form 301, which had been previously prescribed under the above statute in accordance with the Selective Service Regulations for execution by neutral aliens desiring to claim exemption from military service because of that status, was revised on March 16, 1943. The following clause, "I understand that the making of this application to be relieved from such liability will debar me from becoming a citizen of the United States" was deleted and the above quoted proviso in Sec. 3(a) of the Selective Training and Service Act of 1940, 50 U. S. C. App. § 303(a), was printed on the form though not in that portion of it above the applicant's signature.

On February 18, 1944, the Swiss Legation wrote the appellee that it had requested exemption for him under the treaty provisions and enclosed two copies of revised DSS Form 301, which he was instructed to "execute and file immediately with your Local Board." He was also told that this was necessary "to complete the exemption procedure" and that his Local Board "will then classify you in Class IV-C" which was the exempted classification he desired. This letter ended with the following paragraph:

"Please note that, through filing of DSS Form 301, revised, you will not waive your right to apply for American citizenship papers. The final decision regarding your naturalization will remain solely with the competent Naturalization Courts."

The appellee excuted both copies of the form, filed them with his Local Board, and was classified in Class IV-C. In doing so he represented that he was a non-declarant alien and the contention was made below that he fraudulently so [fol. 92] stated, but that issue was resolved in his favor and is not now of moment.

This appeal is from an order admitting the appellee to citizenship and the overall question presented is whether under Article II of the treaty he was entitled to secure exemption from service in the armed forces of the United States without losing whatever rights he otherwise might have to become an American citizen.

While it is plain enough that the treaty did give the appellee immunity from such service, it is equally plain that it did not require him to take advantage of that im-

munity unless he so desired. To be sure the only express condition upon his acceptance of exemption was his liability for whatever pecuniary contributions were exacted from citizens in lieu of military service. This was evidently done to prevent discrimination against citizens and, we think, cannot be treated as an agreement that treaty nationals would be relieved from military service without affecting their status in other respects at all.

The treaty is silent on the subject of the acquisition of citizenship by nationals of either country residing in the other and so far as we are presently informed that subject was not considered when the treaty was made. See 3 Hackworth, *Digest of International Law*, pp. 598-612. In our opinion this treaty is without significance in respect to the right of either country to impose what conditions it sees fit upon the admission to citizenship of nationals of the other. It follows that Section 3(a) of the Selective Training and Service Act of 1940, as amended, 50 U. S. C. App. § 303(a), did not, by granting exemption from military service to all neutral aliens and at the same time debarring all such who applied for it from ever becoming an American citizen, contravene the treaty.

It would also seem plain that Congress intended to have the above statute apply to so-called "treaty aliens" like [fol. 93] the appellee. There is nothing in the statute which limits the words "any citizen or subject of a neutral country" to citizens or subjects of neutral countries which had no treaty granting its citizens exemption from military service. Indeed the statute broadly provides that, "Except as otherwise provided in this Act, every other male person residing in the United States" shall, if within designated age limits, be liable for military training and service. Nor is there anything in the legislative history of the Act of 1940 to show that Congress did not intend the language it used to be as comprehensive as it appears to be.

The Swiss treaty did not undertake to provide how its nationals should claim exemption from military service or how it should be granted them. It had to be, and was, implemented by an Act of Congress. The forerunner of the Act of 1940 was the Selective Draft Law of 1917. 50 U. S. C. App. § 201(a). Ultimately that subjected to military service neutral aliens who had declared their intention to become citizens, but only upon their consent, and provided that they could dissent only by withdrawing their

declarations, which would debar them from ever becoming citizens. Originally, it was proposed to draft all male declarant aliens. A State Department official then suggested to Senator Hitchcock the exception of neutral aliens to comply with our "reciprocal naturalization" treaties. 56 Cong. Rec. 8415, 8418. No one apparently thought such a treaty as this would be affected by the law as passed. See 56 Cong. Rec. 8415-19, 8485. The present statute is unlike the 1917 Act in that it makes no distinction between declarant aliens and non-declarant aliens but that for present purposes is unimportant. A declaration of intention to become a citizen leaves an alien still an alien. Swiss citizens are no different from other aliens in this respect. See 3 Hackworth, *Digest of International Law,* pp. 192-94. So it seems abundantly clear that this [fol. 94] statute was designed to treat alike aliens who were treaty-exempt from military service and those who were not. While in our opinion there was no violation of the treaty with Switzerland in doing so, even if there had been, the statute would control. *Head Money Cases,* 112 U. S. 580; *Pigeon River Co.* v. *Cox,* 291 U. S. 138, 160; *Ex parte Green,* 2 Cir., 123 F. 2d 862, cert. denied *sub nom. Green* v. *McLaren,* 316 U. S. 668.

The appellee, however attempted to obtain his exemption not under the above statute but under the treaty and he did so because he wished to become an American citizen as well as to get exemption. Indeed, we should recognize that his desire to become an American citizen was paramount in his mind, for the court below has found, because it believed appellee when he so testified, that he would not have sought exemption had he known that it would deprive him of naturalization rights. So it is argued (1) that he did not waive any rights by applying for exemption and (2) that, even if he did, the United States is estopped from so asserting because of the revision of DSS Form 301 after negotiations with treaty countries as above stated.

We agree that the appellee waived no treaty rights when he applied for exemption. But we do not agree that on the facts here shown the government is estopped from enforcing the statute in this instance, assuming without deciding, that estoppel would, if shown, have such effect. So far as appears, all the government did was to relieve applicants for exemption from formally acknowledging in writing that they understood their application would

prevent their becoming citizens and to leave the effect of their application to be decided as the law might require. That the Swiss Legation so understood is shown by the letter it sent the appellee advising him that filing the revised form would not be a waiver of his "right to apply for American citizenship papers. The final decision regard- [fol. 95] ing your naturalization will remain solely with the competent Naturalization Courts." This assurance from the Swiss Legation was at most only its own interpretation of the effect of the appellee's application for exemption from military service on his right to apply for citizenship. Even if "right to apply for" can be stretched to be synonymous with "right to obtain" citizenship that would not bind this government. And at the least it was a caveat that informed the appellee that in the end his right to citizenship would be determined by the proper court.

It should be noticed that the claimed estoppel is not based, so far as appears, upon any assurance given by an authorized representative of this government that Form 301, revised, was not an application for exemption from military service in the manner prescribed by the statute, as indeed it was. Nor does the appellant now claim that he did not know it was such a form which he signed with intent thereby to obtain exemption. That he did not fully comprehend the legal consequences of his act, through no fault of this government, does not entitle him to any relief from the disability which the statute has made the result of his exemption. This does seem, however, to be an appealing case for legislative action.

Judgment reversed and petition dismissed.

[fol. 96] UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 14th day of June one thousand nine hundred and fifty.

Present: Hon. Learned Hand, Chief Judge; Hon. Harrie B. Chase, Hon. Charles E. Clark, Circuit Judges.

PAUL MOSIER, Petitioner-Appellee,

v.

UNITED STATES, Respondent-Appellant

Appeal from the District Court of the United States for the Eastern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed and petition dismissed in accordance with the opinion of this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 97] [Endorsed:] United States Court of Appeals, Second Circuit. Paul Moser v. United States. 227. Judgment. United States Court of Appeals, Second Circuit. Filed June 14, 1950. Alexander M. Bell, Clerk.

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[fol. 98] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 95] SUPREME COURT OF THE UNITED STATES

No. 301, October Term, 1950

ORDER ALLOWING CERTIORARI—Filed January 2, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.